

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

WILLIAM M. SMITH,)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 20-0540
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

**SECRETARY'S RESPONSE TO THE COURT'S
DECEMBER 14, 2020, ORDER**

The Secretary of Veterans Affairs (Respondent or Secretary), hereby provides a response to the Court's December 14, 2020, Order. The Court ordered the Secretary to demonstrate whether the recently obtained examination reports included the near and distant corrected and uncorrected vision variables that the Board sought in its 2018 remand. The Court further ordered the Secretary to state whether Petitioner's claims remanded by the Board in November 2018 had been readjudicated and whether Petitioner has been provided with a copy of the decision.

According to Newark, New Jersey Department of Veterans Affairs (VA) Regional Office personnel, the October 1, 2020, eye condition examination included near and distant corrected and uncorrected vision variables that the Board specified in its 2018 remand. Exhibit 1. The

Secretary also attaches the October 1, 2020, medical examination report showing the measurements for near and distant corrected and uncorrected variables. Exhibit 2.

RO personnel also report that Petitioner's claims for an increased ratings for diabetic retinopathy and tinea pedis and onychomycosis of the feet were adjudicated in a December 2020 rating decision. Exhibit 3. In the December 2020 rating decision, the RO determined that there was clear and unmistakable error (CUE) in previous evaluations for diabetic retinopathy, both eyes, status post focal laser and a retroactive increased evaluation to 30% was established from August 21, 2014, an 80% evaluation was established from July 26, 2018, and the evaluation was reduced to 60% effective October 1, 2020. *Id.* The rating decision also combined the evaluation of tinea pedis and onychomycosis of the feet with the evaluation of type II diabetes mellitus because the tinea pedis evaluation of tinea pedis and onychomycosis of the feet was noncompensable. *Id.* The RO also issued a Supplemental Statement of the Case with regard to the two issues on appeal. Exhibit 4.

WHEREFORE, Respondent, Secretary of Veterans Affairs, hereby files a response to the Court's December 14, 2020, Order.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Principal Deputy General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ James B. Cowden
JAMES B. COWDEN
Deputy Chief Counsel

/s/ Lavinia A. Derr
LAVINIA A. DERR
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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury under the laws of the United States of America, that on January 4, 2021, a copy of the foregoing was mailed, postage prepaid to:

William M. Smith
632 East Elm Street
Linden, NJ 07036

/s/ Lavinia A. Derr
LAVINIA A. DERR
Appellate Attorney

EXHIBIT 1

Memorandum

Department of Veterans Affairs

Date: January 4, 2021

From: Newark Regional Office

Subj: Declaration on WILLIAM M SMITH

1. The RO has received the Veterans Evaluation Services (VES) eye examination dated 10-01-20, and this examination contains the near and distant corrected and uncorrected vision variables per the Board's 2018 remand instructions.
2. A rating decision was issued on December 21, 2020, and a Supplemental Statement of the Case (SSOC) was issued on December 21, 2020, regarding the evaluations of the Veteran's service-connected skin condition and diabetic retinopathy.

/s/ Jacqueline Spencer

Jacqueline Spencer, Appeals Team Coach

/s/ Michael Bucolo

Michael Bucolo, VSCM

EXHIBIT 2



Eye Conditions Disability Benefits Questionnaire

FIRST NAME, LAST NAME, MIDDLE NAME (SUFFIX): WILLIAM SMITH M	SOCIAL SECURITY NUMBER/FILE NUMBER: XXX	TODAY'S DATE: 10/01/2020
HOME ADDRESS: 632 E ELM ST, LINDEN, NJ 07036	EXAMINING LOCATION AND ADDRESS: 506 HAMBURG TURNPIKE, SUITE 207 WAYNE, NJ 07470	
HOME TELEPHONE: 9089255539		

CONTRACTOR: VES	VES NUMBER: XXX	VA CLAIM NUMBER:
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IMPORTANT - THE DEPARTMENT OF VETERANS AFFAIRS (VA) **WILL NOT PAY** OR **REIMBURSE** ANY EXPENSES OR COST INCURRED IN THE PROCESS OF COMPLETING AND/OR SUBMITTING THIS FORM. PLEASE READ THE PRIVACY ACT AND RESPONDENT BURDEN INFORMATION ON REVERSE BEFORE COMPLETING FORM.

NOTE: This examination must be conducted by a licensed ophthalmologist or by a licensed optometrist. The examiner must identify the disease, injury or other pathologic process responsible for any decrease in visual acuity or other visual impairment found. Examinations of visual fields or muscle function should be conducted **ONLY** when there is a medical indication of disease or injury that may be associated with visual field defect or impaired muscle function. If indicated to address requested claim, and not medically indicated, dilated fundus exam required.

Is this questionnaire being completed in conjunction with a VA21-2507, C&P examination request?

☒ Yes ☐ No

How was the examination completed (check all that apply)?

☒ In-person examination

☒ Records reviewed

☐ Examination via approved video telehealth

☐ Other, please specify in comments box:

Comments:

ACCEPTABLE CLINICAL EVIDENCE (ACE)

INDICATE METHOD USED TO OBTAIN MEDICAL INFORMATION TO COMPLETE THIS DOCUMENT:

☐ Review of available records (without in-person or video telehealth examination) using the Acceptable Clinical Evidence (ACE) process because the existing medical evidence provided sufficient information on which to prepare the questionnaire and such an examination will likely provide no additional relevant evidence.

☐ Review of available records in conjunction with an interview with the Veteran (without in-person or telehealth examination) using the ACE process because the existing medical evidence supplemented with a telephone interview provided sufficient information on which to prepare the questionnaire and such an examination would likely provide no additional relevant evidence.

EVIDENCE REVIEW

Evidence reviewed (check all that apply):

☐ Not requested

☐ No records were reviewed

☐ VA claims file (hard copy paper C-file)

☒ VA e-folder

☐ VA Computerized Patient Record System (CPRS)

☐ Other (please identify other evidence reviewed):

Evidence Comments:

All available records were reviewed and findings considered when completing this DBQ.

SECTION I - DIAGNOSIS

NOTE: The diagnosis section should be filled out AFTER the clinician has completed the examination

1A. Does the Veteran currently have an eye condition (*other than congenital or developmental errors of refraction*)?

☒ Yes ☐ No

(If "Yes," provide only diagnoses that pertain to eye conditions):

Diagnosis #1: diabetic retinopathy

ICD code(s): E11

Date of diagnosis: 09/2012

Diagnosis #2: pseudoaphakia

ICD code(s): H27

Date of diagnosis: 11/2019

Diagnosis #3:

ICD code(s):

Date of diagnosis:

1B. If there are additional diagnoses that pertain to eye conditions, list using above format:

SECTION II - MEDICAL HISTORY

2. Describe the history (*including onset and course*) of the Veteran's current eye condition(s) (*brief summary*):

For the Established Compensation Condition of - DIABETIC RETINOPATHY / EYES RETINOPATHY

Date of onset: 09/2012

11/2019

Details of onset: During an eye exam

Course of the condition since onset: Progressed/Worsened

Current symptoms (or state if the condition has resolved): decrease in vision

Any treatment, medications or surgery? multiple laser treatments

SECTION III - PHYSICAL EXAMINATION

1. VISUAL ACUITY

Visual acuity should be reported according to the lines on the Snellen chart or its equivalent. If assessment of the Veteran's visual acuity falls between two lines on the Snellen chart, round up to the higher (worse) level (poorer vision) for answers a-d below. (For example, 20/60 would be reported as 20/70; 20/80 would be reported as 20/100, etc.)

Examination of visual acuity must include central uncorrected and corrected visual acuity for distance and near vision. Evaluate visual acuity on the basis of corrected distance vision with central fixation. Visual acuity should not be determined with eccentric fixation or viewing.

a. Uncorrected distance:

RIGHT:

☐ 5/200 or worse ☐ 10/200 ☒ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

LEFT:

☐ 5/200 or worse ☐ 10/200 ☒ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

b. Corrected distance:

RIGHT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☒ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

LEFT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☐ 20/200 ☒ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

c. Uncorrected Near (Reading):

RIGHT:

☐ 5/200 or worse ☐ 10/200 ☒ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

LEFT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☒ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

d. Corrected Near (Reading):

RIGHT:

☐ 5/200 or worse ☐ 10/200 ☒ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

LEFT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☐ 20/200 ☒ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

2. DIFFERENCE IN CORRECTED VISUAL ACUITY FOR DISTANCE AND NEAR VISION

a. Does the Veteran have a difference equal to two or more lines on the Snellen test type chart or its equivalent between distance and near corrected vision, with the near vision being worse?

☐ Yes ☒ No

(If "Yes," complete items 2b thru 2d)

b. Provide a second recording of corrected distance and near vision

Second recording of corrected distance vision:

RIGHT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

LEFT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

Second recording of corrected near vision:

RIGHT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

LEFT:

☐ 5/200 or worse ☐ 10/200 ☐ 15/200 ☐ 20/200 ☐ 20/100 ☐ 20/70 ☐ 20/50 ☐ 20/40 ☐ 20/20 or better

c. Explain reason for the difference between distance and near corrected vision:

d. Does the lens required to correct distance vision in the poorer eye differ by more than 3 diopters from the lens required to correct distance vision in the better eye?

☐ Yes ☐ No

(If "Yes," explain reason for the difference):

3. PUPILS

a. Pupil diameter:

Right: 2 mm

Left: 2 mm

b. Pupils are round and reactive to light?

☒ Yes ☐ No

c. Is an afferent pupillary defect present?

☐ Yes ☒ No

(If "Yes," indicated affected eye):

☐ Right ☐ Left ☐ Both

d. ☐ Other (Describe):

Eye affected:

☐ Right ☐ Left ☐ Both

4. ANATOMICAL LOSS, LIGHT PERCEPTION ONLY, EXTREMELY POOR VISION OR BLINDNESS

a. Does the Veteran have anatomical loss, light perception only, extremely poor vision or blindness of either eye?

☐ Yes ☒ No

(If "Yes," complete items 4b thru 4f)

b. Does the Veteran have anatomical loss of either eye?

☐ Yes ☐ No

If "Yes," indicate affected eye:

☐ Right ☐ Left ☐ Both

If "Yes," is the Veteran able to wear an ocular prosthesis?

☐ Yes ☐ No

If "No," provide reason:

c. Is the Veteran's vision limited to no more than light perception only in either eye?

☐ Yes ☐ No

If "Yes," indicate for which eye(s) the Veteran's vision is limited to no more than light perception:

☐ Right ☐ Left ☐ Both

d. Is the Veteran able to recognize test letters at 1 foot or closer?

☐ Yes ☐ No

If "No," indicate with which eye(s) the Veteran is unable to recognize test letters at 1 foot or closer:

☐ Right ☐ Left ☐ Both

e. Is the Veteran able to perceive objects, hand movements, or count fingers at 3 feet?

☐ Yes ☐ No

If "No," indicate with which eye(s) the Veteran is unable to perceive objects, hand movements, or count fingers at 3 feet:

☐ Right ☐ Left ☐ Both

f. Does the Veteran have visual acuity of 20/200 or less in the better eye with use of a correcting lens based upon visual acuity loss (i.e. USA statutory blindness with bilateral visual acuity of 20/200 or less)?

☐ Yes ☐ No

5. ASTIGMATISM

a. Does the Veteran have a corneal irregularity that results in severe irregular astigmatism?

☐ Yes ☒ No

(If "Yes," complete items 5b and 5c)

b. Does the Veteran customarily wear contact lenses to correct for the above corneal irregularity?

☐ Yes ☐ No

If "Yes," does using contact lenses result in more visual improvement than using the standard spectacle correction?

☐ Yes ☐ No

c. Was the corrected visual acuity determined using contact lenses?

☐ Yes ☐ No

If "No," explain:

6. DIPLOPIA

a. Does the Veteran have diplopia (*double vision*)?

☐ Yes ☒ No

(If "Yes," complete items 6b thru 6e)

b. Provide etiology (*such as traumatic injury, thyroid eye disease, myasthenia gravis, etc.*):

NOTE: For VA purposes, examiners must use either a Goldmann perimeter chart or the Tangent Screen method identifying the four major quadrants (upward, downward, left lateral, and right lateral) and the central fields (20 degrees or less).

c. Indicate the areas where diplopia is present (*the fields in which the Veteran sees double using binocular vision*):

☐ Central 20 degrees

☐ 21 to 30 degrees

☐ Down

☐ Lateral

☐ Up

☐ 31 to 40 degrees

☐ Down

☐ Lateral

☐ Up

☐ Greater than 40 degrees

☐ Down

☐ Lateral

☐ Up

d. Indicate frequency of the diplopia:

☐ Constant ☐ Occasional

If occasional, indicate frequency of diplopia and most recent occurrence:

e. Is the diplopia correctable with standard spectacle correction?

☐ Yes ☐ No

If "No," is the diplopia correctable with standard spectacle correction that includes a special prismatic correction?

☐ Yes ☐ No

7. TONOMETRY

a. If tonometry was performed, provide results:

Right eye pressure: 16

Left eye pressure: 16

b. Tonometry method used:

☒ Goldmann applanation

☐ Other (*Describe*):

8. SLIT LAMP AND EXTERNAL EYE EXAM

a. Slit lamp:

☐ Normal bilaterally ☒ Abnormal

(If Abnormal, complete items 8b thru 8g)

b. External exam/lids/lashes:

Right:

☒ Normal

☐ Other *(Describe)*:

Left

☒ Normal

☐ Other *(Describe)*:

c. Conjunctiva/sclera:

Right

☒ Normal

☐ Other *(Describe)*:

Left

☒ Normal

☐ Other *(Describe)*:

d. Cornea:

Right

☒ Normal

☐ Other *(Describe)*:

Left

☒ Normal

☐ Other *(Describe)*:

e. Anterior chamber:

Right

☒ Normal

☐ Other *(Describe)*:

Left

☒ Normal

☐ Other *(Describe)*:

f. Iris:

Right

☒ Normal

☐ Other *(Describe)*:

Left

☒ Normal

☐ Other *(Describe)*:

g. Lens:

Right

☐ Normal☒ Other (*Describe*):

pseudoaphakia

Left

☐ Normal☒ Other (*Describe*):

pseudoaphakia

9. INTERNAL EYE EXAM_(FUNDUS)

a. Fundus:

☐ Normal bilaterally ☒ Abnormal*(If abnormal, complete items 9b thru 9f)*

b. Optic disc:

Right

☒ Normal☐ Other (*Describe*):

Left

☒ Normal☐ Other (*Describe*):

c. Macula:

Right

☐ Normal☒ Other (*Describe*):

retinal hemorrhage, laser scarring

Left

☐ Normal☒ Other (*Describe*):

laser scars

d. Vessels:

Right

☒ Normal☐ Other (*Describe*):

Left

☒ Normal☐ Other (*Describe*):

e. Vitreous:

Right

☒ Normal☐ Other (*Describe*):

Left

☒ Normal☐ Other (*Describe*):

f. Periphery:

Right

☐ Normal☒ Other (Describe):

PRP laser scarring

Left

☐ Normal☒ Other (Describe):

PRP laser scarring

10. VISUAL FIELDS

a. Does the Veteran have a documented visual field defect?

☒ Yes ☐ No

(If "Yes," complete items 10b thru 10f)

NOTE: For VA purposes, examiners must perform visual field testing using either Goldmann kinetic perimetry or automated perimetry using Humphrey Model 750, Octopus Model 101, or later versions of these perimetric devices with simulated kinetic Goldmann testing capability. The results must be documented for at least 16 meridians 22½-degrees apart for each eye. If additional testing is necessary to evaluate visual fields, it must be conducted using either a tangent screen or a 30-degree threshold visual field with the Goldmann III stimulus size, and the results must be documented on the examination report.

b. Was visual field testing performed?

☒ Yes ☐ No

Results:

☒ Using Goldmann's equivalent III/4e target☐ Using Goldmann's equivalent IV/4e target (used for aphakic individuals not well adapted to contact lens correction or pseudophakic individuals not well adapted to intraocular lens implant)☐ Other (Describe):

c. Does the Veteran have contraction of a visual field?

☐ Yes ☒ No

(If "Yes," complete the following chart):

Meridian	Normal Degrees	Right Eye (OD) Actual Degrees (Cannot exceed the normal degrees)	Left Eye (OS) Actual Degrees (Cannot exceed the normal degrees)
Up (90° OD/90° OS)	45		
Up Temporally (45° OD/135° OS)	55		
Temporally (0° OD/180° OS)	85		
Down Temporally (315° OD/225° OS)	85		
Down (270° OD/270° OS)	65		
Down Nasally (225° OD/315° OS)	50		
Nasally (180° OD/0° OS)	60		
Up Nasally (135° OD/45° OS)	55		

d. Does the Veteran have loss of a visual field?

☒ Yes ☐ No

(If "Yes," check all that apply and indicate eye affected)

- | | | | |
|--|--------------------------------|-------------------------------|--|
| <input type="checkbox"/> Homonymous hemianopsia | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Loss of temporal half of visual field | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Loss of nasal half of visual field | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Loss of inferior half of visual field | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Loss of superior half of visual field | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input checked="" type="checkbox"/> Other (Specify): | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input checked="" type="checkbox"/> Both |

central scotoma due to laser treatment

e. Does the Veteran have a scotoma?

☒ Yes ☐ No

(If "Yes," check all that apply and indicate eye affected)

- | | | | |
|---|--------------------------------|-------------------------------|--|
| <input type="checkbox"/> Scotoma affecting at least 1/4 of the visual field | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input checked="" type="checkbox"/> Centrally located scotoma | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input checked="" type="checkbox"/> Both |

f. Does the Veteran have legal (statutory) blindness based upon visual field loss (visual field diameter of 20 degrees or less in the better eye, even if the corrected visual acuity is 20/20)?

☐ Yes ☒ No**SECTION IV - EYE CONDITIONS**

1. Does the Veteran have any of the following eye conditions?

☒ Yes ☐ No

(If "No," proceed to Section V)

(If "Yes," check all that apply):

- | | |
|---|--------------------------|
| <input type="checkbox"/> External Eye Condition, including the eyelash, eyelid, and eyebrow | (Complete item 2 below) |
| <input type="checkbox"/> Lacrimal System Conditions, including Dry Eye Syndrome | (Complete item 3 below) |
| <input type="checkbox"/> Cornea/Conjunctiva Conditions | (Complete item 4 below) |
| <input type="checkbox"/> Glaucoma | (Complete item 5 below) |
| <input type="checkbox"/> Uveal Tract Conditions | (Complete item 6 below) |
| <input checked="" type="checkbox"/> Lens Conditions, including Cataracts | (Complete item 7 below) |
| <input checked="" type="checkbox"/> Retina, Macula, or Vitreous Conditions | (Complete item 8 below) |
| <input type="checkbox"/> Neuro-Ophthalmic Conditions | (Complete item 9 below) |
| <input type="checkbox"/> Ocular Neoplasms | (Complete item 10 below) |
| <input type="checkbox"/> Trauma/Hemorrhage | (Complete item 11 below) |
| <input type="checkbox"/> Other Eye Conditions | (Complete item 12 below) |

2. EXTERNAL EYE CONDITION, INCLUDING THE EYELASH, EYELID, AND EYEBROW

a. Indicate the Veteran's condition and side affected (check all that apply):

- | | | | |
|---|--------------------------------|-------------------------------|-------------------------------|
| <input type="checkbox"/> Ectropion | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Entropion | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Lagophthalmos | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Complete loss of eyebrows | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Complete loss of eyelashes | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Partial or complete loss of eyelid | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Pterygium | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Pinguecula | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Symblepharon | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |
| <input type="checkbox"/> Other (Describe): | <input type="checkbox"/> Right | <input type="checkbox"/> Left | <input type="checkbox"/> Both |

b. Is the Veteran's decrease in visual acuity or other visual impairment, if present, attributable to an external eye condition?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify the external eye condition(s) responsible for visual impairment:

If "No," explain:

3. LACRIMAL SYSTEM CONDITIONS, INCLUDING DRY EYE SYNDROME

a. Does the Veteran have a disorder of the lacrimal apparatus, to include epiphora, dacryocystitis, etc.?

☐ Yes ☐ No

If "Yes," specify condition and side affected:

☐ Right ☐ Left ☐ Both

b. Is the Veteran's decrease in visual acuity or other visual impairment attributable to a lacrimal system condition?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify the lacrimal system condition(s) responsible for visual impairment:

If "No," explain:

c. Does the Veteran have dry eye syndrome?

☐ Yes ☐ No

(If "Yes," please complete items 3d through 3h)

d. Indicate the eye affected by dry eye syndrome:

☐ Right ☐ Left ☐ Both

e. Date dry eye syndrome began: _____

f. Has the Veteran ever had elective procedures, such as laser eye surgery (e.g. LASIK)?

☐ Yes ☐ No

If "Yes," specify which eye, procedure and date:

☐ Right ☐ Left ☐ Both

Name or description of procedure:

Date(s) of procedure: _____

Did dry eye syndrome begin after the elective procedure?

☐ Yes ☐ No

g. Indicate the types of treatment used to treat dry eye syndrome:

☐ No treatment

☐ Over-the-counter artificial tear drops

☐ Prescription medications

☐ Special contact lenses

☐ Plugs to block the tear ducts through which tears drain

☐ Surgical procedures

Name or description of surgical procedure:

Date(s) of surgery:

☐ Other (Describe):

h. Is the Veteran's decrease in visual acuity or other visual impairment attributable to dry eye syndrome?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify the dry eye syndrome condition(s) responsible for visual impairment:

If "No," explain:

4. CORNEA/CONJUNCTIVA CONDITIONS

a. Indicate the Veteran's condition and side affected:

<input type="checkbox"/> Keratopathy	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Trachomatous conjunctivitis:	<input type="checkbox"/> Right	<input type="checkbox"/> Active	<input type="checkbox"/> Inactive
(Indicate if it is active or inactive for each eye)	<input type="checkbox"/> Left	<input type="checkbox"/> Active	<input type="checkbox"/> Inactive
<input type="checkbox"/> Chronic conjunctivitis (nontrachomatous)	<input type="checkbox"/> Right	<input type="checkbox"/> Active	<input type="checkbox"/> Inactive
(Indicate if it is active or inactive for each eye)	<input type="checkbox"/> Left	<input type="checkbox"/> Active	<input type="checkbox"/> Inactive
<input type="checkbox"/> Keratoconus	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Corneal transplant	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Other (Describe):	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both

b. Is the Veteran's decrease in visual acuity or other visual impairment attributable to a corneal condition?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify corneal condition responsible for visual impairment:

If "No," explain:

c. If the Veteran had a corneal transplant, please indicate the current residual(s):

(Check all that apply):

<input type="checkbox"/> No current residuals	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Pain	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Photophobia	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Glare sensitivity	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Other (Describe):	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both

5. GLAUCOMA

a. Specify the type of glaucoma:

☐ Angle-closure

Eye affected: ☐ Right ☐ Left ☐ Both

☐ Open-angle

Eye affected: ☐ Right ☐ Left ☐ Both

☐ Other, specify type (For example, neovascular, phakolytic, etc.)

Eye affected: ☐ Right ☐ Left ☐ Both

b. Does the glaucoma require continuous medication for treatment?

☐ Yes ☐ No

If "Yes," list medication(s) used for treatment of glaucoma:

c. Is the Veteran's decrease in visual acuity or other visual impairment, if present, attributable to glaucoma?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment:

If "No," explain:

6. UVEAL TRACT CONDITIONS

a. Indicate the Veteran's condition and eye affected:

<input type="checkbox"/> Choroidopathy (<i>including uveitis, iritis, cyclitis, and choroiditis</i>)	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Scleritis	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Tuberculosis of the eye (indicate if it is active or inactive for each eye)	<input type="checkbox"/> Right	<input type="checkbox"/> Active	<input type="checkbox"/> Inactive
	<input type="checkbox"/> Left	<input type="checkbox"/> Active	<input type="checkbox"/> Inactive
<input type="checkbox"/> Other (<i>Describe</i>):	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both

b. Is the Veteran's decrease in visual acuity or other visual impairment, if present, attributable to any eye condition checked above in this section?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify inflammatory or traumatic condition responsible for visual impairment:

If "No," explain:

7. LENS CONDITIONS, INCLUDING CATARACTS

a. Indicate cataract condition:

☐ Preoperative (*cataract is present*)

Eye affected: ☐ Right ☐ Left ☐ Both

☒ Postoperative (*cataract has been removed*)

Eye affected: ☐ Right ☐ Left ☒ Both

Is there a replacement intraocular lens? (pseudophakia)

☒ Yes ☐ No

If "Yes," indicate eye: ☐ Right ☐ Left ☒ Both

b. Is there aphakia or dislocation of the crystalline lens?

☐ Yes ☒ No

If "Yes," indicate eye: ☐ Right ☐ Left ☐ Both

c. Is the Veteran's decrease in visual acuity or other visual impairment, if present, attributable to any of the eye conditions checked above in this section?

☐ Yes ☒ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify condition in this section responsible for visual impairment:

If "No," explain:

8. RETINA, MACULA, OR VITREOUS CONDITIONS

a. Indicate retina, macula, or vitreous condition and eye affected:

<input checked="" type="checkbox"/> Diabetic retinopathy (<i>including proliferative and nonproliferative types</i>)	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input checked="" type="checkbox"/> Both
<input type="checkbox"/> Retinopathy, not otherwise specified	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Maculopathy, not otherwise specified	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Localized retinal scars, atrophy, or irregularities, that are centrally located and result in irregular, duplicated, enlarged, or diminished image	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Detachment of retina	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both
<input type="checkbox"/> Retinal dystrophy (<i>including retinitis pigmentosa, wet or dry macular</i>)	<input type="checkbox"/> Right	<input type="checkbox"/> Left	<input type="checkbox"/> Both

degeneration, early-onset macular degeneration, rod and/or cone dystrophy)

☐ Other (Describe):

☐ Right

☐ Left

☐ Both

b. Is the Veteran's decrease in visual acuity or other visual impairment, if present, attributable to a retina macula, or vitreous condition?

☒ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify the retina, macula, or vitreous condition(s) responsible for visual impairment:

multiple laser treatments caused decrease in best corrected central vision

If "No," explain:

9. NEURO-OPHTHALMIC CONDITIONS

☐ Ptosis

☐ Right

☐ Left

☐ Both

☐ Optic neuropathy

☐ Right

☐ Left

☐ Both

☐ Paralysis of accommodation due to neuropathy of the oculomotor nerve (3rd cranial nerve)

☐ Right

☐ Left

☐ Both

☐ Post-chiasmal disorders

☐ Right

☐ Left

☐ Both

If there is a post-chiasmal disorder, indicate the underlying cause:

☐ Cerebrovascular accident (CVA)

☐ Demyelinating disease

☐ Intracranial mass/tumor

☐ Traumatic Brain Injury (TBI)

☐ Alzheimer's Disease

☐ Other – Specify the underlying neurologic condition (for example: Jakob-Creutzfeldt disease, etc.):

b. Does the Veteran have nystagmus?

☐ Yes ☐ No

If "Yes," is it central? ☐ Yes ☐ No

c. Is the Veteran's decrease in visual acuity or other visual impairment attributable to a neuro-ophthalmic condition?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment:

If "Yes," specify the neuro-ophthalmic condition(s) responsible for visual impairment:

If "No," explain:

10. OCULAR NEOPLASMS

a. Indicate the Veteran's condition and eye affected:

☐ Malignant neoplasm of the eye, orbit, or adnexa (excluding skin)

☐ Right

☐ Left

☐ Both

☐ Benign neoplasm of the eye, orbit, or adnexa (excluding skin)

☐ Right

☐ Left

☐ Both

☐ Other (Describe):

☐ Right

☐ Left

☐ Both

b. Is the Veteran's decrease in visual acuity or other visual impairment, if present, attributable to an eye neoplasm condition?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify optic neuropathy or disc condition responsible for visual impairment:

If "No," explain:

c. Is the neoplasm active or in remission?

☐ Active ☐ Remission

d. Has the Veteran completed treatment or is the Veteran currently undergoing treatment for a benign or malignant neoplasm of the eye, orbit, or adnexa (excluding skin) or metastases?

☐ Yes ☐ No, watchful waiting

If "Yes," indicate type of treatment the Veteran is currently undergoing or has completed (*check all that apply*):

☐ Treatment completed; currently in watchful waiting status

☐ Surgery (*more extensive than enucleation*)

Name or description of surgical procedure:

Date(s) of surgery: _____

☐ Radiation therapy (*to include, but not limited to x-ray therapy more extensive than to the area of the eye*)

Date of most recent treatment: _____

Date of completion of treatment or anticipated date of completion: _____

☐ Systemic chemotherapy

Date of most recent treatment: _____

Date of completion of treatment or anticipated date of completion: _____

☐ Other therapeutic procedure

Name or description of procedure:

Date of most recent procedure: _____

e. Does the Veteran currently have any residual conditions or complications due to the neoplasm (*including metastases*) or its treatment, other than those already documented in the report above?

☐ Yes ☐ No

If "Yes," list residual conditions and complication (*brief summary*):

11. TRAUMA/HEMORRHAGE

a. Indicate condition, and eye affected:

☐ Intraocular hemorrhage ☐ Right ☐ Left ☐ Both

☐ Unhealed eye injury, inclusive of orbital trauma as well as penetrating and non-penetrating eye injury ☐ Right ☐ Left ☐ Both

☐ Other (*Describe*): ☐ Right ☐ Left ☐ Both

b. Is the Veteran's decrease in visual acuity or other visual impairment attributable to an eye hemorrhage or trauma?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify the hemorrhage or trauma condition responsible for visual impairment:

If "No," explain:

12. OTHER EYE CONDITION(S) NOT COVERED BY ITEMS 2 THROUGH 11

a. Does the Veteran have any other eye conditions, pertinent physical findings, complications, signs, and/or symptoms related to a current eye diagnosis?

☐ Yes ☐ No

If "Yes," describe:

b. Is the Veteran's decrease in visual acuity or other visual impairment attributable to this condition?

☐ Yes ☐ No ☐ There is no decrease in visual acuity or other visual impairment

If "Yes," specify condition(s) responsible for visual impairment:

If "No," explain:

SECTION V - SCARRING AND DISFIGUREMENT

1. Does the Veteran have scarring or disfigurement attributable to any eye condition?

☐ Yes ☒ No

(If "Yes," complete appropriate dermatological DBQ)

SECTION VI - INCAPACITATING EPISODES

NOTE: For the purposes of evaluation under 38 CFR 4.79, an incapacitating episode is an eye condition serious enough to require a clinic visit to a provider specifically for treatment purposes. Examples of treatment may include but are not limited to: Systematic immunosuppressants or biologic agents; intravitreal or periocular injections; laser treatments; or other surgical interventions.

1. During the past 12 months, has the Veteran had any incapacitating episodes attributable to any eye condition?

☒ Yes ☐ No

If "Yes," specify the eye condition(s) causing incapacitating episodes:

2. Indicate the number of DOCUMENTED medical visits for treatment of any eye condition over the past 12 months:

☐ At least 1 but less than 3

☐ At least 3 but less than 5

☒ At least 5 but less than 7

☐ 7 or more

3. Indicate the type of intervention that occurred during the incapacitating episode (*Check all that apply*):

☐ Systemic immunosuppressant or biologic agent (*name of medication*):

☐ Intravitreal or periocular injections (*name of medication*):

☒ Laser treatments

☐ Surgical intervention (*Describe*):

☐ Other (*Describe*):

SECTION VII - FUNCTIONAL IMPACT

1. Does the Veteran's eye condition(s) impact his or her ability to work?

☒ Yes ☐ No

If "Yes," describe the impact of each of the Veteran's eye condition(s), providing one or more examples:

SECTION VIII - REMARKS

8. Remarks (*If any*):

no scars observed on adnexa

Is there a need for the Veteran to follow up with his/her primary care provider regarding any life threatening findings in this examination (not limited to claimed condition(s))?

☐ Yes ☒ No

Additional Question 1: PLEASE ACKNOWLEDGE THAT ALL RELEVANT RECORDS PERTAINING TO THE VETERAN'S CONDITIONS HAVE BEEN REVIEWED.

Answer Question 1: All available records were reviewed and findings considered when completing this DBQ.

Additional Question 2: THE VETERAN'S ESTABLISHED DIAGNOSIS IS DIABETIC RETINOPATHY / EYES RETINOPATHY.

IF YOU HAVE PROVIDED ANY ADDITIONAL DIAGNOSES, OR IF THE ESTABLISHED DIAGNOSIS HAS CHANGED IN ANY WAY, PLEASE SELECT AT LEAST ONE FROM THE FOLLOWING:

A. THERE IS NO CHANGE IN THE SERVICE CONNECTED DIAGNOSIS AND NO ADDITIONAL DIAGNOSES HAVE BEEN RENDERED.

B. THE NEW DIAGNOSIS IS A CORRECTION OF THE PREVIOUS DIAGNOSIS.

C. THERE IS A WORSENING OF THE VETERAN'S SYMPTOMS HOWEVER NO CHANGE TO THE SERVICE CONNECTED DIAGNOSIS AND NO ADDITIONAL DIAGNOSES HAVE BEEN RENDERED.

D. ADDITIONAL CONDITIONS WERE FOUND WHICH ARE DIRECTLY DUE TO OR RELATED TO THE SERVICE CONNECTED DIAGNOSIS (I.E. A PROGRESSION).

E. ADDITIONAL CONDITIONS WERE FOUND WHICH ARE UNRELATED TO THE SERVICE CONNECTED DIAGNOSIS (I.E. A NEW AND SEPARATE CONDITION).

FOR OPTION E, PLEASE SPECIFY WHICH OF THE VETERAN'S SYMPTOMS AND FINDINGS CORRESPOND WITH EACH DIAGNOSIS, IF FEASIBLE.

F. THE SERVICE CONNECTED DIAGNOSIS HAS RESOLVED.

Answer Question 2: E. ADDITIONAL CONDITIONS WERE FOUND WHICH ARE UNRELATED TO THE SERVICE CONNECTED DIAGNOSIS (I.E. A NEW AND SEPARATE CONDITION).

Additional Question 3: FOR OPTIONS OTHER THAN A AND C PLEASE PROVIDE YOUR MEDICAL RATIONALE.

Answer Question 3: pseudoaphakia is not a direct result of Diabetes, but a direct consequence of cataracts

Additional Question 4: PLEASE STATE IF ANY EYE CONDITION, IF FOUND, IS AT LEAST AS LIKELY AS NOT SECONDARY TO THE VETERAN'S DIABETES MELLITUS TYPE II. PLEASE STATE YOUR OPINION USING ONE OF THE FOLLOWING LEGALLY RECOGNIZED PHRASES: [] IS CAUSED BY OR A RESULT OF [], [] IS MOST LIKELY CAUSED BY OR A RESULT OF [], [] IS AT LEAST AS LIKELY AS NOT (50/50 PROBABILITY) CAUSED BY OR A RESULT OF [], [] IS LESS LIKELY AS NOT (LESS THAN 50/50 PROBABILITY) CAUSED BY OR A RESULT OF [], [] IS NOT CAUSED BY OR A RESULT OF [].

Answer Question 4: diabetic retinopathy IS CAUSED BY OR A RESULT OF diabetes, pseudoaphakia IS LESS LIKELY AS NOT CAUSED BY OR A RESULT OF diabetes mellitus.

Additional Question 5: PLEASE PROVIDE A RATIONALE TO SUPPORT YOUR OPINION.

Answer Question 5: Diabetic retinopathy is a direct result of uncontrolled diabetes mellitus.

Diabetes is one of the key factors that result in the development of cataracts. Although the reasons why are still not fully understood, people with diabetes mellitus statistically face a 60% greater risk of developing cataracts. Pseudoaphakia is a direct result of cataract formation

SECTION IX - OPTOMETRIST/PHYSICIAN'S CERTIFICATION AND SIGNATURE

CERTIFICATION - To the best of my knowledge, the information contained herein is accurate, complete and current.

DIANA zabarko
DIANA zabarko (Oct 16, 2020 14:37 EDT)

9A. OPTOMETRIST/PHYSICIAN'S SIGNATURE:	
9B. OPTOMETRIST/PHYSICIAN'S PRINTED NAME:	DIANA S. ZABARKO, O.D.
9C. DATE SIGNED:	See date in digital signature above.
9D. OPTOMETRIST/PHYSICIAN'S PHONE NUMBER:	1-877-637-8387
9E. OPTOMETRIST/NATIONAL PROVIDER IDENTIFIER (NPI) NUMBER AND MEDICAL LICENSE NUMBER AND STATE:	1073611018 / 27OA00583800 NJ
9F. OPTOMETRIST/PHYSICIAN'S ADDRESS:	506 HAMBURG TURNPIKE SUITE 207, WAYNE, NJ 07470
9G. OPTOMETRIST/PHYSICIAN'S SPECIALTY:	Optometrist

EXHIBIT 3



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office**

William Smith

**VA File Number
XXX**

**Decision Review Officer Decision
12/21/2020**

INTRODUCTION

The records reflect that you are a Veteran of the Vietnam Era. You served in the Army from March 5, 1968 to October 3, 1969. The Board of Veterans Appeals remanded the case to our office on June 8, 2020. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Two clear and unmistakable errors are found in previous evaluations of diabetic retinopathy, both eyes, status post focal laser both eyes (previously rated under DC 6079), which now includes diabetic maculopathy, and a retroactive increased evaluation to 30 percent disabling is established from August 21, 2014. Also, a retroactive increase to 80 percent disabling is established from July 26, 2018. The evaluation is reduced to 60 percent effective October 1, 2020.
2. Evaluation of tinea pedis and onychomycosis of the feet has now been combined with the evaluation of type II diabetes mellitus (Herbicide) because the evaluation of tinea pedis and onychomycosis of the feet is noncompensable.

EVIDENCE



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- Court of Appeals for Veterans' Claims (CAVC) decision, received March 13, 2014
- Section (§) 5103 Notice, dated May 21, 2014
- Letter to you from the Board of Veterans' Appeals, dated July 3, 2014
- Statement, Michael E. Wildhaber, dated August 1, 2014, received August 1, 2014
- Additional Evidence Response Form for Cases with a VA Substantive Appeal (Form 9) Filed Prior to February 2, 2013, received August 1, 2014
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received August 5, 2014
- Statement, Michael E. Wildhaber, dated August 1, 2014, received August 5, 2014
- Examinations, VA Medical Center East Orange, dated August 15, 2014, August 19, 2014, and August 21, 2014
- Statement, Michael E. Wildhaber, dated August 18, 2014, received August 18, 2014
- Laboratory results, Endocrine and Diabetes, PA, dated May 7, 2014, received August 21, 2014
- Board of Veterans Appeals Remand, dated September 22, 2014
- Statement, Michael E. Wildhaber, dated September 29, 2014, received September 29, 2014
- Medical opinion, VA Medical Center East Orange, dated February 8, 2016
- Letter to you dated March 1, 2016
- SSOC Notice Response received June 8, 2016
- Statement, Michael E. Wildhaber, dated June 15, 2016, received June 15, 2016
- Statement, Michael E. Wildhaber, dated October 19, 2016, received October 19, 2016
- Additional Evidence Response Form for Cases with a VA Substantive Appeal (Form 9) Filed Prior to February 2, 2013, received October 19, 2016
- Vocational Assessment, Vargas Vocational Consulting, dated August 22, 2016, received October 19, 2016
- Letter to you dated December 14, 2016, notifying your of our request for your employment information from the U.S. Postal Service
- Statement, Michael E. Wildhaber, dated February 9, 2017, received February 15, 2017
- Board of Veterans Appeals Decision dated April 7, 2017
- Statement, Michael E. Wildhaber, dated May 31, 2017, received May 31, 2017
- Letter to you dated May 21, 2018
- Examinations, VA Medical Center East Orange, dated July 26, 2018
- Private treatment records, Dr. Robert G. Mirsky, Retina-Vitreous Consultants, and Endocrine and Diabetes, PA, for the period October 7, 2003 to July 27, 2011, received August 18, 2011
- Examination, VA Medical Center East Orange, dated February 9, 2012
- Board of Veterans' Appeals remand dated November 6, 2018
- Letter to you dated November 7, 2018
- Your statement dated November 30, 2018, received November 30, 2018
- Letter to you dated February 21, 2019
- Your statement dated January 21, 2019, received January 22, 2019
- Waiver of Opportunity to Submit Additional Evidence or Argument and Additional Evidence Response Form, dated April 9, 2019, received April 13, 2019
- Your statement, dated April 7, 2019, received April 13, 2019
- Letter to you from the United States Office of Personnel Management, dated March 23, 2017, received April 13, 2019
- Letter to you dated July 9, 2013
- Your statement dated July 25, 2019, received August 2, 2019
- Treatment records, Dr. Jordan Steinberg, for the period from March 11, 2016 to July 31,



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2019, and VA treatment records for the period August 26, 1996 to September 4, 1998, received August 2, 2019

- Your statement dated March 17, 2018 with Appellant's Informal Brief, received August 2, 2019
- Examination, VES on behalf of VA, dated December 28, 2019
- VA Form 27-0820 Report of General Information dated February 7, 2020
- VA Form 9 Appeal to Board of Veterans' Appeals received March 5, 2020
- Medical opinion, VA Medical Center East Orange, dated April 13, 2020
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received May 29, 2020
- VA Form 9 Appeal to Board of Veterans' Appeals received May 29, 2020
- Private treatment records, Barnabas Health, for the period February 26, 2020 to March 10, 2020, received May 29, 2020
- Board of Veterans Appeals remand dated June 8, 2020
- VA Form 27-0820 Report of General Information dated June 10, 2020
- Two letters to you dated June 25, 2020
- VA Form 27-0820 Report of General Information dated July 20, 2020
- Two letters to you dated July 21, 2020
- Private treatment records, Dr. Michael Verdi, Foot Health Center, LLC, for the period July 22, 2009 to January 13, 2016, received July 28, 2020
- Private treatment records, Dr. Robert Mirsky, Retina-Vitreous Consultants, for the period April 23, 2019 to September 17, 2019, received July 28, 2020
- Private treatment records, Dr. Jordan Steinberg, for the period January 13, 2019 to July 1, 2020, with Podiatric Pathology Report from Bako Pathology Services dated July 12, 2018, received July 31, 2020
- Private treatment records, Dr. David Garbowit, Endocrine and Diabetes, PA, and St. Barnabas, for the period February 25, 2010 to June 18, 2020, received August 3, 2020
- Your statement, dated August 8, 2020, received August 8, 2020
- Private treatment records, Dr. David Garbowit, Endocrine and Diabetes, PA, and Barnabas Health, for the period February 25, 2010 to April 27, 2016, received August 10, 2020
- Copy of letter from Rutgers Legal Aid Clinic dated August 18, 1977, with accompanying hearing loss records, received August 15, 2020
- Treatment records, VA New Jersey Healthcare System, including but not limited to the VA Medical Centers in East Orange and Lyons, and the Elizabeth Clinic, for the period July 22, 1996 to July 26, 2018, received through December 11, 2020
- Undated handwritten statement received August 24, 2020
- Two letters to you dated September 29, 2020
- Copy of VA East Orange examination dated December 22, 1995
- Examinations and medical opinions, VES on behalf of VA, dated September 2, 2020, October 1, 2020 and November 3, 2020
- Statement, Dr. Jordan Steinberg, dated September 25, 2012, received October 3, 2012
- Medical opinions and addenda, VES on behalf of VA, dated October 1, 2020, November 2, 2020 and December 3, 2020
- Medical opinion, VA Medical Center East Orange, dated October 31, 2006

REASONS FOR DECISION



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1. Whether the evaluation assigned for diabetic retinopathy, both eyes, status post focal laser both eyes (previously rated under DC 6079) was clearly and unmistakably erroneous.

Your appeal regarding this issue was remanded for additional evidence, specifically, additional treatment records and a VA examination. The requested actions have now been completed.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, a retroactive increase for diabetic retinopathy, both eyes, status post focal laser both eyes (previously rated under DC 6079) is granted as the previous evaluation decision was a clear and unmistakable error. (38 CFR 3.105)

Your private treatment records also diagnose diabetic maculopathy, and this has been included as part of your eye conditions as secondary to your service connected diabetes mellitus (38 CFR 3.310) It is also noted that you have been diagnosed with cataracts, and your claim for entitlement to service connection for this condition has been decided separately. All symptoms have been attributed to your service connected retinopathy and maculopathy, which are evaluated based on the same criteria, as noted below. Separate evaluations are not warranted for retinopathy and maculopathy, since they are evaluated based on the same criteria (38 CFR 4.14, 38 CFR 4.79).

In your case, while your appeal has been pending you attended a VA examination regarding your service connected eye condition on August 21, 2014. The results of this examination show that a 30 percent evaluation is warranted for your condition based on best corrected distance vision. This evidence was part of your record when we issued subsequent decisions regarding the evaluation of your service connected eye condition on August 24, 2018. Therefore we erred by not establishing the 30 percent evaluation for this condition. We have now corrected your record by increasing your evaluation to 30 percent (38 CFR 4.1). A 30 percent evaluation is warranted from August 21, 2014, the date of the VA examination showing a worsening of your condition (38 CFR 3.105, 38 CFR 3.400).

The rating schedule for evaluating eye conditions changed during the time your appeal has been pending. A 30 percent evaluation is warranted from August 21, 2014 until the subsequent increase to 80 percent on July 26, 2018 under both the old and new rating schedules.

We have assigned a 30 percent evaluation for your retinopathy and maculopathy, under the old rating schedule based on:

- Visual impairment as described below

Your visual acuity warrants 30 percent evaluation based on:



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Your left eye shows corrected near vision of 20/50 (20/50). Your left eye corrected far vision was shown as 20/50 (20/50).

Your right eye shows corrected near vision of 15/200 (15/200). Your right eye corrected far vision was shown as 20/200 (20/200).

Your eyes show normal visual fields bilaterally.

Higher evaluations are based on more severe levels of visual impairment. (38 CFR 4.75, 38 CFR 4.76, Historical 38 CFR 4.79 effective prior to May 13, 2018)

The rating schedule for evaluating eye conditions changed on May 13, 2018. A 30 percent evaluation is also warranted under the new rating schedule. We have assigned a 30 percent evaluation for your diabetic retinopathy (includes proliferative and non-proliferative types) and maculopathy based on:

- Visual impairment described below

Your eyes show normal visual fields bilaterally.

Additional symptom(s) include:

- No incapacitating episodes reported.

Your visual acuity warrants a 30 percent evaluation based on:

Your left eye shows corrected near vision of 20/50. Your left eye corrected far vision was shown as 20/50.

Your right eye shows corrected near vision of 15/200. Your right eye corrected far vision was shown as 20/200.

Higher evaluations are based on more severe levels of visual impairment.

A higher evaluation of 40 percent is not warranted under the General Rating Formula for Diseases of the Eye unless there are documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79 effective May 13, 2018)

We also erred in our decision dated August 24, 2018 because the results of your examination conducted on July 26, 2018 show visual impairment with impairment in visual acuity and with visual fields. We established an evaluation based solely on visual acuity findings. Your private treatment records, which were of record at the time of the August 24, 2018 decision, note your diagnoses of diabetic retinopathy and diabetic maculopathy, and also note that you underwent laser treatments to both eyes to treat these conditions. The VA examiner in July 2018 noted that your decrease in visual acuity or other visual impairment is due to your bilateral proliferative diabetic retinopathy and noted abnormal findings of the macula due to laser treatments. We have now established an evaluation based on the visual acuity and visual field findings (38 CFR



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3.105).

An increased evaluation of 80 percent is assigned from July 26, 2018, the date of the VA examination showing that the increased evaluation is warranted (38 CFR 4.1, 38 CFR 3.400).

We have assigned an 80 percent evaluation for your retinopathy and maculopathy, based on:

- Visual impairment as described below

Additional symptom(s) include:

- Incapacitating episodes described below

Your visual acuity warrants 60 percent evaluation based on:

Your left eye shows corrected near vision of 20/100 (20/100). Your left eye corrected far vision was shown as 20/100 (20/100).

Your right eye shows corrected near vision of 10/200 (10/200). Your right eye corrected far vision was shown as 10/200 (10/200).

Your visual fields warrant 60 percent evaluation based on:

The left eye shows an average contraction to 18.125 degrees. This is based on the following examination findings: A normal field of vision temporally is 85 degrees. The examination shows 40 degrees. Normal vision down temporally is 85. Your field is 17 in the left eye. The normal field of vision down is 65. 20 degrees is shown. Down nasally, 50 is normal. You show 13. Normal vision nasally is 60. Examination findings show 10. Up nasally, 55 is considered normal. 14 is demonstrated. The normal field of vision up is 45 degrees. 12 is shown. The final field of vision considered for the left eye is up temporally. 55 is normal with 19 shown on examination. The total remaining visual field for the left eye is 145. When this number is divided by the eight directions, rounded up, the average contraction is obtained. The left eye can be rated on its concentric contraction or based on an equivalent visual acuity of 20/100. (38 CFR 4.77)

Unilateral concentric contraction of the left eye visual field with remaining field of 16 to 30 degrees warrants 10 percent evaluation, and is included in your overall visual fields evaluation. (38 CFR 4.79)

The right eye shows an average contraction to 13.625 degrees. This is based on the following examination findings: A normal field of vision temporally is 85 degrees. The examination shows 20 degrees. Normal vision down temporally is 85. Your field is 12 in the right eye. The normal field of vision down is 65. 10 degrees is shown. Down nasally, 50 is normal. You show 10. Normal vision nasally is 60. Examination findings show 20. Up nasally, 55 is considered normal. 12 is demonstrated. The normal field of vision up is 45 degrees. 10 is shown. The final field of vision considered for the right eye is up temporally. 55 is normal with 15 shown on examination. The total remaining visual field for the right eye is 109. When this number is divided by the eight directions, rounded up, the average contraction is obtained. The right eye can be rated on its



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concentric contraction or based on an equivalent visual acuity of 20/200. (38 CFR 4.77)

Unilateral concentric contraction of the right eye visual field with remaining field of 6 to 15 degrees warrants 20 percent evaluation, and is included in your overall visual fields evaluation. (38 CFR 4.77)

A noncompensable evaluation is warranted under the General Rating Formula for Diseases of the Eye based on:

- No incapacitating episodes noted

When both decreased visual acuity and visual field defect are present in one or both eyes and are service connected, the visual acuity and visual field defect (expressed as a level of visual acuity), are separately evaluated and combined under the provisions of 38 CFR §4.25 {38 CFR §4.77(c)}. Your visual acuity warrants 60 percent evaluation. Your visual field defect warrants 60 percent evaluation. These evaluations combine under 38 CFR §4.25 for 80 percent evaluation. (38 CFR §4.25 {38 CFR §4.77(c)})

Higher evaluations are based on more severe levels of visual impairment. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79)

The evaluation for impairment of central visual acuity is based on objective testing. Higher evaluations are assigned for more severe levels of visual impairment. (38 CFR 4.76)

An evaluation of 60 percent is assigned from October 1, 2020, the date of the VA contract examination showing improvement in your condition and that an 80 percent evaluation is no longer warranted. No due process is needed for this reduction since there will be no reduction in payment based on this reduced evaluation. (38 CFR 4.1, 38 CFR 3.400, 38 CFR 3.105, 38 CFR 3.500)

We have assigned a 60 percent evaluation for your diabetic retinopathy (includes proliferative and non-proliferative types) and maculopathy based on:

- Visual impairment described below

Your eyes show normal visual fields bilaterally.

Additional symptom(s) include:

- Documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months.

Your visual acuity warrants a 60 percent evaluation based on:

Your left eye shows corrected near vision of 20/200. Your left eye corrected far vision was shown as 20/100.

Your right eye shows corrected near vision of 15/200. Your right eye corrected far vision was shown as 20/200.



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Higher evaluations are based on more severe levels of visual impairment. It is noted that your most recent examination also noted the presence of a central scotoma. Please be advised that a separate evaluation is not warranted for a central scotoma in your case. A central scotoma is rated as 10 percent unilaterally, or is rated based on visual acuity, whichever will result in a higher evaluation. In your case, visual acuity findings result in a higher evaluation. (38 CFR 4.79)

This is the highest schedular evaluation allowed by law for diabetic retinopathy (includes proliferative and non-proliferative types) and maculopathy. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79)

This is the highest evaluation allowed by law under the General Rating Formula for Diseases of the Eye. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79)

Please be advised that separate correspondence will also discuss this issue.

2. Evaluation of tinea pedis and onychomycosis of the feet currently evaluated as 0 percent disabling.

The Board of Veterans' Appeals remanded this issue for additional development. The requested actions have now been completed.

Please be advised that, since your skin condition is secondary to your service connected diabetes mellitus and your skin condition is noncompensable, VA guidelines mandate that noncompensable complications are considered part of the diabetic process. We have now corrected your record to show the service connected condition as diabetes mellitus type II with tinea pedis and onychomycosis of the feet. (38 CFR 4.119) Because tinea pedis and onychomycosis of the feet would be rated as a non-compensable disability by itself, it has now been included in combination with your service-connected diabetes mellitus type II. A higher and separate evaluation for tinea pedis and onychomycosis of the feet is not warranted unless there is At least 5 percent, but less than 20 percent, of the entire body affected; or, at least 5 percent, but less than 20 percent, of the exposed areas of the body affected; or, intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period. (Historical 38 CFR 4.118 effective prior to August 13, 2018). Under the new rating schedule, a higher and separate evaluation for tinea pedis and onychomycosis of the feet is not warranted unless there is characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas; or, characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body; or, intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA or other immunosuppressive drugs required for a total duration of less than six weeks over the past 12-month period. (38 CFR 4.118)

The way in which skin conditions are evaluated changed while your appeal has been pending. A noncompensable evaluation is warranted under both the old and new rating schedules.



William Smith
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We have continued a 0 percent evaluation for your tinea pedis and onychomycosis of the feet under the old rating schedule based on:

- Less than 5 percent of the entire body affected
- No more than topical therapy required during the past 12-month period

Higher evaluations may also be warranted based on:

- Disfigurement of the head, face, or neck
- Scars considered disabling due to limitation of function of the affected part; or,
- Painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for dermatophytosis unless the evidence shows:

- At least 5 percent, but less than 20 percent, of the entire body affected; or,
- At least 5 percent, but less than 20 percent, of the exposed areas of the body affected; or,
- Intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period. (Historical 38 CFR 4.118 effective prior to August 13, 2018)

We have continued a 0 percent evaluation for your tinea pedis and onychomycosis of the feet under the new rating schedule based on:

- Characteristic lesions involving less than 5 percent of the entire body
- No more than topical therapy required over the past 12-month period

Higher evaluations may also be warranted based on:

- Disfigurement of the head, face, or neck
- Scars considered disabling due to limitation of function of the affected part; or,
- Painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for general rating formula for the skin unless the evidence shows:

- Characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas; or,
- Characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body; or,
- Intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA or other immunosuppressive drugs required for a total duration of less than six weeks over the past 12-month period. (38 CFR 4.118)

Please be advised that separate correspondence also discusses this issue.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the



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regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.



EXHIBIT 4



DEPARTMENT OF VETERANS AFFAIRS

December 21, 2020

WILLIAM M SMITH
632 E ELM ST
LINDEN NJ 07036

In reply, refer to:
309/AT/SD
File Number: XXX
William Smith

Dear William Smith:

Enclosed is a "Supplemental Statement of the Case" (SSOC). It is not a decision on any new issues, but is intended to inform you of any material changes in, or additions to, the information contained in the "Statement of the Case" (SOC) that we previously sent to you. The following information will help you decide how to respond. We encourage you to discuss this with your representative, if you have one.

Your appeal was sent back to us by the Board of Veterans' Appeals (the Board) for further development, which has been completed. Before returning your appeal to the Board, we are giving you a period of time to respond with additional comments or evidence. Please note that a response at this time is optional and is not required to continue your appeal.

- If you wish to respond, you have 30 days from the date of this letter to respond. There is no special form to use. You can simply write to us and tell us in your own words what you disagree with in this SSOC and why.
- If you do not wish to respond, and you do not want us to wait for the 30 days to expire, you can write to us and let us know that. If you do not respond, the Board will consider what you have already submitted in deciding your appeal.

We hope that the above information is helpful.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.



File Number: XXX
SMITH, WILLIAM M

If you	Here is what to do.
Use the Internet	Send electronic inquiries through the Internet at https://iris.custhelp.com/ .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> chart, below.

In all cases, be sure to refer to your VA file number 25235268.

If you are looking for general information about benefits and eligibility, you should visit our web site at <https://www.va.gov> or search the Frequently Asked Questions (FAQs) at <https://iris.custhelp.com/>.

We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized Veterans' Service Organizations and/or representatives. Veterans' Service Organizations, which are recognized or approved to provide services to the Veteran community, can also help you with any questions.

Thank you for your service,

Regional Office Director

Regional Office Director

Enclosure(s): Appeals Satisfaction Notice
VA Form 20-0998
Where to Send Written Correspondence
VA Modernized Decision Review System SOC/SSOC Opt-In Fact Sheet

cc: On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act of 2017 (Appeals Modernization Act), creating a modernized review system for claims and appeals. The modernized appeals system took effect on February 19, 2019, and provides streamlined choices for seeking review of your VA claim decision. You are eligible to opt-in



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SMITH, WILLIAM M

to this new process based on your receipt of this Statement of the Case or Supplemental Statement of the Case. If you continue to disagree with our decision, please refer to the enclosed fact sheet for a more thorough explanation of your decision review options and submission deadlines should you decide to opt-in. If you wish to remain in the legacy process, please follow the instructions above regarding actions required to request further review of your appeal.



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ISSUE:

1. Entitlement to an initial disability rating greater than 20 percent for diabetic retinopathy and greater than 60 percent subsequent to July 26, 2018, and whether the evaluation assigned for diabetic retinopathy, both eyes, status post focal laser both eyes (previously rated under DC 6079) was clearly and unmistakably erroneous.

2. Entitlement to an initial compensable disability rating for tinea pedis and onychomycosis of both feet.

EVIDENCE:

- Vocational Assessment, Vargas Vocational Consulting, dated August 22, 2016, received October 19, 2016
- Examinations, VA Medical Center East Orange, dated August 15, 2014, August 19, 2014, and August 21, 2014
- Medical opinion, VA Medical Center East Orange, dated April 13, 2020
- Your statement, dated August 8, 2020, received August 8, 2020
- Medical opinion, VA Medical Center East Orange, dated February 8, 2016
- Private treatment records, Dr. Robert G. Mirsky, Retina-Vitreous Consultants, and Endocrine and Diabetes, PA, for the period October 7, 2003 to July 27, 2011, received August 18, 2011
- VA Form 9 Appeal to Board of Veterans' Appeals received March 5, 2020
- Letter to you dated July 9, 2013
- VA Form 21-8940, Veteran's Application For Increased Compensation Based On Unemployability, received August 5, 2014
- VA Form 27-0820 Report of General Information dated June 10, 2020
- Examinations and medical opinions, VES on behalf of VA, dated September 2, 2020, October 1, 2020 and November 3, 2020
- Board of Veterans Appeals Remand, dated September 22, 2014
- Letter to you dated November 7, 2018
- Examinations, VA Medical Center East Orange, dated July 26, 2018
- Additional Evidence Response Form for Cases with a VA Substantive Appeal (Form 9) Filed Prior to February 2, 2013, received August 1, 2014
- Court of Appeals for Veterans' Claims (CAVC) decision, received March 13, 2014



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- VA Form 9 Appeal to Board of Veterans' Appeals received May 29, 2020
- Examination, VES on behalf of VA, dated December 28, 2019
- Treatment records, VA New Jersey Healthcare System, including but not limited to the VA Medical Centers in East Orange and Lyons, and the Elizabeth Clinic, for the period July 22, 1996 to July 26, 2018, received through December 11, 2020
- Private treatment records, Dr. Jordan Steinberg, for the period January 13, 2019 to July 1, 2020, with Podiatric Pathology Report from Bako Pathology Services dated July 12, 2018, received July 31, 2020
- Statement, Michael E. Wildhaber, dated August 1, 2014, received August 5, 2014
- Waiver of Opportunity to Submit Additional Evidence or Argument and Additional Evidence Response Form, dated April 9, 2019, received April 13, 2019
- Letter to you from the United States Office of Personnel Management, dated March 23, 2017, received April 13, 2019
- Laboratory results, Endocrine and Diabetes, PA, dated May 7, 2014, received August 21, 2014
- VA Form 27-0820 Report of General Information dated February 7, 2020
- Private treatment records, Dr. Robert Mirsky, Retina-Vitreous Consultants, for the period April 23, 2019 to September 17, 2019, received July 28, 2020
- SSOC Notice Response received June 8, 2016
- Additional Evidence Response Form for Cases with a VA Substantive Appeal (Form 9) Filed Prior to February 2, 2013, received October 19, 2016
- Private treatment records, Dr. David Garbowit, Endocrine and Diabetes, PA, and Barnabas Health, for the period February 25, 2010 to April 27, 2016, received August 10, 2020
- Statement, Michael E. Wildhaber, dated August 1, 2014, received August 1, 2014
- Your statement dated July 25, 2019, received August 2, 2019
- Examination, VA Medical Center East Orange, dated February 9, 2012
- Copy of letter from Rutgers Legal Aid Clinic dated August 18, 1977, with accompanying hearing loss records, received August 15, 2020
- Board of Veterans Appeals remand dated June 8, 2020
- Two letters to you dated June 25, 2020
- Statement, Michael E. Wildhaber, dated June 15, 2016, received June 15, 2016
- Statement, Michael E. Wildhaber, dated May 31, 2017, received May 31, 2017



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- Medical opinions and addenda, VES on behalf of VA, dated October 1, 2020, November 2, 2020 and December 3, 2020
- Medical opinion, VA Medical Center East Orange, dated October 31, 2006
- Section (§) 5103 Notice, dated May 21, 2014
- Board of Veterans' Appeals remand dated November 6, 2018
- Letter to you dated May 21, 2018
- Undated handwritten statement received August 24, 2020
- Your statement dated March 17, 2018 with Appellant's Informal Brief, received August 2, 2019
- Letter to you dated February 21, 2019
- Two letters to you dated September 29, 2020
- Private treatment records, Barnabas Health, for the period February 26, 2020 to March 10, 2020, received May 29, 2020
- Private treatment records, Dr. Michael Verdi, Foot Health Center, LLC, for the period July 22, 2009 to January 13, 2016, received July 28, 2020
- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, received May 29, 2020
- Your statement dated November 30, 2018, received November 30, 2018
- Statement, Dr. Jordan Steinberg, dated September 25, 2012, received October 3, 2012
- Two letters to you dated July 21, 2020
- Letter to you from the Board of Veterans' Appeals, dated July 3, 2014
- Statement, Michael E. Wildhaber, dated August 18, 2014, received August 18, 2014
- Board of Veterans Appeals Decision dated April 7, 2017
- Copy of VA East Orange examination dated December 22, 1995
- Statement, Michael E. Wildhaber, dated February 9, 2017, received February 15, 2017
- Your statement, dated April 7, 2019, received April 13, 2019
- Letter to you dated December 14, 2016, notifying your of our request for your employment information from the U.S. Postal Service
- Letter to you dated March 1, 2016



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- Statement, Michael E. Wildhaber, dated September 29, 2014, received September 29, 2014
- Private treatment records, Dr. David Garbowit, Endocrine and Diabetes, PA, and St. Barnabas, for the period February 25, 2010 to June 18, 2020, received August 3, 2020
- Statement, Michael E. Wildhaber, dated October 19, 2016, received October 19, 2016
- Your statement dated January 21, 2019, received January 22, 2019
- VA Form 27-0820 Report of General Information dated July 20, 2020
- Treatment records, Dr. Jordan Steinberg, for the period from March 11, 2016 to July 31, 2019, and VA treatment records for the period August 26, 1996 to September 4, 1998, received August 2, 2019

ADJUDICATIVE ACTIONS:

03/13/2014	Court of Appeals for Veterans Claims (CAVC) remand dated March 13, 2014
09/22/2014	The appeal was remanded by the Board of Veterans' Appeals for additional treatment records and examinations.
04/07/2017	The appeal was remanded by the Board of Veterans' Appeals for additional treatment records and examinations.
08/24/2018	The veteran was furnished a Supplemental Statement of the Case outlining actions taken on the claim.
11/06/2018	The appeal was remanded by the Board of Veterans' Appeals for additional treatment records and examination.
02/13/2020	The veteran was furnished a Supplemental Statement of the Case outlining actions taken on the claim.
06/08/2020	The appeal was remanded by the Board of Veterans' Appeals for additional treatment records and examination.
12/21/2020	The veteran was furnished a Supplemental Statement of the Case outlining actions taken on the claim.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement of all veteran benefits.



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38 USC Section 5107 (03/02) - Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY- Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT- The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

§19.32 - Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated. (Authority: 38 U.S.C. 7105(d)(3))

§20.302 Rule 302. (07/08) - Time limit for filing...

(a) Notice of Disagreement. Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed. (Authority: 38 U.S.C. 7105(b)(1))

(b) Substantive Appeal.

(1) General. Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will



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be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(2) Special rule in certain cases where additional evidence is submitted. Except in the case of simultaneously contested claims, if (i) a claimant submits additional evidence within 1 year of the date of mailing of the notification of the determination being appealed, and (ii) that evidence requires, in accordance with 19.31 of this title, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the 1-year appeal period. (Authority: 38 U.S.C. 7105 (b)(1), (d)(3).)

(c) Response to Supplemental Statement of the Case. Where a Supplemental Statement of the Case is furnished, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal. (Authority: 38 U.S.C. 7105(d)(3))

§3.103 - Procedural due process and appellate rights.

(a) Statement of policy. Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.

(b) The right to notice:

(1) General. Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, the right of representation and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision.

(2) Advance notice and opportunity for hearing. Except as otherwise provided in paragraph (b)(3) of this section, no award of compensation, pension or dependency and indemnity



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compensation shall be terminated, reduced or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken.

(3) Exceptions. In lieu of advance notice and opportunity for a hearing, VA will send a written notice to the beneficiary or his or her fiduciary at the same time it takes an adverse action under the following circumstances:

(i) An adverse action based solely on factual and unambiguous information or statements as to income, net worth, or dependency or marital status that the beneficiary or his or her fiduciary provided to VA in writing or orally (under the procedures set forth in Sec. 3.217(b)), with knowledge or notice that such information would be used to calculate benefit amounts.

(ii) An adverse action based upon the beneficiary's or fiduciary's failure to return a required eligibility verification report.

(iii) Evidence reasonably indicates that a beneficiary is deceased. However, in the event that VA has received a death certificate, a terminal hospital report verifying the death of a beneficiary or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required.

(iv) An adverse action based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see 3.106 on renouncement).

(v) An adverse action based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension (see 3.654 regarding active service pay).

(vi) An adverse action based upon a garnishment order issued under 42 U.S.C. 659(a).
(Authority: 38 U.S.C. 501(a))

(4) Restoration of benefits. VA will restore retroactively benefits that were reduced, terminated, or otherwise adversely affected based on oral information or statements if within 30 days of the date on which VA issues the notification of adverse action the beneficiary or his or her fiduciary asserts that the adverse action was based upon information or statements that were inaccurate or upon information that was not provided by the beneficiary or his or her fiduciary. This will not preclude VA from taking subsequent action that adversely affects benefits.

(c) The right to a hearing.



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(1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in §20.1304 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before one or more VA employees having original determinative authority who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

(2) The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers material and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses are expected to be present. The Veterans Benefits Administration will not normally schedule a hearing for the sole purpose of receiving argument from a representative. It is the responsibility of the VA employee or employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician's observations will be read into the record. (Authority: 38 U.S.C. 501(a))

(d) Submission of evidence. Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) The right to representation. Subject to the provisions of §§14.626 through 14.637 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) Notification of decisions. The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting relief. All notifications will advise the claimant of the reason for the decision; the date the decision will be effective; the right to a hearing subject to paragraph (c) of this section; the right to initiate an



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appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal; and the periods in which an appeal must be initiated and perfected (See part 20 of this chapter, on appeals). Further, any notice that VA has denied a benefit sought will include a summary of the evidence considered. (Authority: 38 U.S.C. 501, 1115, 1506, 5104.)

§3.104 (05/2001) - Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in 3.105 and 3.2600 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964; 56 FR 65846, Dec. 19, 1991; 66 FR 21874, May 2, 2001]

§3.105(a) - Revision of decisions (Error).

Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of 3.500(b)(2) will apply.



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§3.105(e) - Revision of decisions (Reduction in evaluation-compensation)

Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that compensation payments should be continued at their present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires. (Authority: 38 U.S.C. 5112(b)(6))

§3.2600 - Review of benefit claims decisions.

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by an Adjudication Officer, Veterans Service Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under 3.103(c).



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(d) The reviewer may grant a benefit sought in the claim notwithstanding 3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see 3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001. (Authority: 38 U.S.C. 5109A and 7105(d))

§3.310 (12-13) - Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

(a) General. Except as provided in 3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.

(b) Aggravation of nonservice-connected disabilities. Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. However, VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. The rating activity will determine the baseline and current levels of severity under the Schedule for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the disease, from the current level. (Authority: 38 U.S.C. 1110 and 1131)



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(c) Cardiovascular disease. Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the proximate result of the service-connected amputation or amputations.

(d) Traumatic brain injury.

(1) In a veteran who has a service-connected traumatic brain injury, the following shall be held to be the proximate result of the service-connected traumatic brain injury (TBI), in the absence of clear evidence to the contrary:

(i) Parkinsonism, including Parkinson's disease, following moderate or severe TBI;

(ii) Unprovoked seizures following moderate or severe TBI;

(iii) Dementias of the following types: presenile dementia of the Alzheimer type, frontotemporal dementia, and dementia with Lewy bodies, if manifest within 15 years following moderate or severe TBI;

(iv) Depression if manifest within 3 years of moderate or severe TBI, or within 12 months of mild TBI; or

(v) Diseases of hormone deficiency that result from hypothalamo-pituitary changes if manifest within 12 months of moderate or severe TBI.

(2) Neither the severity levels nor the time limits in paragraph (d)(1) of this section preclude a finding of service connection for conditions shown by evidence to be proximately due to service-connected TBI. If a claim does not meet the requirements of paragraph (d)(1) with respect to the time of manifestation or the severity of the TBI, or both, VA will develop and decide the claim under generally applicable principles of service connection without regard to paragraph (d)(1).

(3) (i) For purposes of this section VA will use the following table for determining the severity of a TBI:

Mild	Moderate	Severe
Normal structural imaging	Normal or abnormal structural imaging	Normal or abnormal structural imaging
LOC = 0-30 min	LOC > 30 min and < 24 hours	LOC > 24 hrs
AOC = a moment up to 24 hrs	AOC > 24 hours. Severity based on other criteria	
PTA = 0-1 day	PTA > 1 and < 7 days	PTA > 7 days



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GCS = 13-15

GCS = 9-12

GCS = 3-8

Note: The factors considered are:

Structural imaging of the brain.

LOC-Loss of consciousness.

AOC-Alteration of consciousness/mental state.

PTA-Post-traumatic amnesia.

GCS-Glasgow Coma Scale. (For purposes of injury stratification, the Glasgow Coma Scale is measured at or after 24 hours.)

(ii) The determination of the severity level under this paragraph is based on the TBI symptoms at the time of injury or shortly thereafter, rather than the current level of functioning. VA will not require that the TBI meet all the criteria listed under a certain severity level in order to classify the TBI at that severity level. If a TBI meets the criteria in more than one category of severity, then VA will rank the TBI at the highest level in which a criterion is met, except where the qualifying criterion is the same at both levels. (Authority: 38 U.S.C. 501, 1110 and 1131)

[44 FR 50340, Aug. 28, 1979, as amended at 66 FR 18198, Apr. 6, 2001; 71 FR 52747, Sept. 7, 2006; 78 FR 76208, Dec. 17, 2013]

Supplement Highlights references: 45(2), 73(3), 106(2).

§3.400 (10-06) - General (all)

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later.

(Authority: 38 U.S.C. 5110(a))

(a) Unless specifically provided. On basis of facts found.

(b) Disability benefits-(1) Disability pension (3.3). An award of disability pension may not be effective prior to the date entitlement arose.

(i) Claims received prior to October 1, 1984. Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.

(ii) Claims received on or after October 1, 1984. (A) Except as provided in paragraph

(b)(1)(ii)(B) of this section, date of receipt of claim.

(B) If, within one year from the date on which the veteran became permanently and totally



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disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of this subparagraph, the presumptive provisions of 3.342(a) do not apply.

(2) Disability compensation-(i) Direct service connection (3.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(ii) Presumptive service connection (3.307, 3.308, 3.309). Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

(c) Death benefits-(1) Death in service (38 U.S.C. 5110(j), Pub. L. 87-825) (3.4(c), 3.5(b)). First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received with 1 year after the date the initial report of actual death or finding of presumed death was made; however benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) Service-connected death after separation from service (38 U.S.C. 5110(d), Pub. L. 87-825) (3.4(c), 3.5(b)). First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(3) Nonservice-connected death after separation from service. (i) For awards based on claims received prior to October 1, 1984, or on or after December 10, 2004, first day of the month in which the veteran's death occurred if claim is received within one year after the date of death; otherwise, date of receipt of claim.

(ii) For awards based on claims received between October 1, 1984, and December 9, 2004, first day of the month in which the veteran's death occurred if claim is received within 45 days after the date of death; otherwise, date of receipt of claim.

(Authority: 38 U.S.C. 5110(d))

(4) Dependency and indemnity compensation-(i) Deaths prior to January 1, 1957 (3.702). Date of receipt of election.

(ii) Child (38 U.S.C. 5110(e), Pub. L. 87-835). First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.



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(iii) Deaths on or after May 1, 1957 (in-service waiver cases) (3.5(b)(3) and 3.702). Date of receipt of election. (See 3.114(a)).

(d) [Reserved]

(e) Apportionment (3.450 through 3.461, 3.551). On original claims, in accordance with the facts found. On other than original claims from the first day of the month following the month in which:

(1) Claim is received for apportionment of a veteran's award, except that where payments to him (her) have been interrupted, apportionment will be effective the day following date of last payment if a claim for apportionment is received within 1 year after that date;

(2) Notice is received that a child included in the surviving spouse's award is not in the surviving spouse's custody, except that where payments to the surviving spouse have been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date.

(f) Federal employees' compensation cases (3.708). Date authorized by applicable law, subject to any payments made by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act over the same period of time.

(g) Correction of military records (38 U.S.C. 5110(i); Pub. L. 87-825). Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a Board established under 10 U.S.C. 1552 or 1553, or because of other corrective action by competent military naval, or air authority, the award will be effective from the latest of these dates:

(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;

(2) Date of receipt of claim if claim was disallowed; or

(3) One year prior to date of reopening of disallowed claim.

(h) Difference of opinion (3.105). (1) As to decisions not final prior to receipt of an application for reconsideration or to reopen, or prior to reconsideration on Department of Veterans Affairs initiative, the date from which benefits would have been payable if the former decision had been favorable.

(2) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) prior to receipt of an application for reconsideration or to reopen, the date of receipt of such application or the date entitlement arose, whichever is later.

(3) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) and reconsideration is undertaken solely on Department of Veterans Affairs initiative, the date of Central Office approval authorizing a favorable decision or the date of the favorable Board of Veterans Appeals decision.

(4) Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death.

(i) Disability or death due to hospitalization, etc. (38 U.S.C. 5110(c), (d); Public Law 87-825; 3.358, 3.361, and 3.800.) (1) Disability. Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.



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(2) Death. First day of month in which the veteran's death occurred if a claim is received within 1 year following the date of death; otherwise, date of receipt of claim.

(j) Election of Department of Veterans Affairs benefits (3.700 series). (1) Unless otherwise provided, the date of receipt of election, subject to prior payments.

(2) July 1, 1960, as to pension payable under Pub. L. 86-211, where pension is payable for June 30, 1960, under the law in effect on that date, including an award approved after that date, if the election is filed within (generally) 120 days from date of notice of the award. The award will be subject to prior payments over the same period of time.

(3) January 1, 1965, as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election if filed prior to May 1, 1965.

(4) January 1, 1965, as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility on that date for pension on the basis of service in the Indian wars or Spanish-American War and an election is filed prior to May 1, 1965.

(5) January 1, 1969, as to pension payable under Pub. L. 86-211 (73 Stat. 432), as amended by Pub. L. 90-275 (82 Stat. 64), if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election is filed prior to May 1, 1969.

(6) August 1, 1972, as to pension payable under Pub. L. (73 Stat. 432) as amended by Pub. L. 92-328 (86 Stat. 393) if there was basic eligibility on that date based on death of a veteran of the Spanish-American War and an election is filed prior to December 1, 1972.

(k) Error (3.105). Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision.

(l) Foreign residence. (See 3.653).

(m) Forfeiture (3.901, 3.902). Day following date of last payment on award to payee who forfeited.

(n) Guardian. Day following date of last payment to prior payee or fiduciary.

Note: Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients.

(o) Increases (38 U.S.C. 5110(a) and 5110(b)(2), Pub. L. 94-71, 89 Stat. 395; 3.109, 3.156, 3.157)-(1) General. Except as provided in paragraph (o)(2) of this section and 3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.

(2) Disability compensation. Earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date otherwise, date of receipt of claim.

(p) Liberalizing laws and Department of Veterans Affairs issues. See 3.114.

(q) New and material evidence (3.156) other than service department records. (1) Received within appeal period or prior to appellate decision. The effective date will be as though the former decision had not been rendered. See 20.1103, 20.1104 and 20.1304(b)(1) of this chapter. (2) Received after final disallowance. Date of receipt of new claim or date entitlement arose, whichever is later.

(r) Reopened claims. (3.109, 3.156, 3.157, 3.160(e)) Date of receipt of claim or date entitlement



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arose, whichever is later, except as provided in 20.1304(b)(1) of this chapter.

(Authority: 38 U.S.C. 501)

(s) Renouncement (3.106). Except as provided in 3.106(c), date of receipt of new claim.

(t) Whereabouts now known. (See 3.158(c).)

(u) Void, annulled or terminated marriage of a child (38 U.S.C. 5110 (a), (k), (l); Pub. L. 93-527, 88 Stat. 1702; 3.55)-(1) Void. Date the parties ceased to cohabit or date of receipt of claim, whichever is later.

(2) Annulled. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) Death. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of 3.55(b) of this part are met. (4) Divorce. Date the decree became final if claim is filed within 1 year of that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of 3.55(b) of this part are met.

(v) Termination of remarriage of surviving spouse (38 U.S.C. 5110(a), (k); 38 U.S.C. 103(d) and 3010(l) effective January 1, 1971; 3.55)-(1) Void. Date the parties ceased to cohabit or date of receipt of claim, whichever is the later.

(2) Annulled. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) Death. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of 3.55(a) of this part are met.

(4) Divorce. Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of 3.55(a) of this part are met.

(w) Termination of relationship or conduct resulting in restriction on payment of benefits (38 U.S.C. 5110(m), effective January 1, 1971; 3.50(b)(2) and 3.55). Date of receipt of application filed after termination of relationship and after December 31, 1970. Benefits are not payable unless the provisions of 3.55(a), as applicable, are met.

(x) Effective date of determination of incompetency (3.353). Date of rating of incompetency. (Not applicable to an incompetency determination made for insurance purposes under 38 U.S.C. 1922).

(y) Effective date of determination restoring competency (3.353). Date shown by evidence of record that competency was regained.

(z) Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group (Pub. L. 95-202). (1) Original claim: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) Reopened claim: Latest of the following dates:

(i) November 23, 1977.

(ii) Date entitlement arose.

(iii) One year prior to date of receipt of reopened claim.



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§3.400(b)2 - General. Disability Compensation.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. (Authority: 38 U.S.C. 5110(a))

(b) Disability benefits:

(2) Disability compensation:

(i) Direct service connection (3.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(ii) Presumptive service connection (3.307, 3.308, 3.309). Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

§3.500 - General - Reductions and Discontinuances

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit. (Authority: 38 U.S.C. 5112(b))

(a) Except as otherwise provided (38 U.S.C. 5112(a)). In accordance with the facts found.

(b) Error; payee's or administrative (38 U.S.C. 5112(b), (9), (10)).

(1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with the payee's knowledge.



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(2) Except as provided in paragraph (r) of this section, and 3.501(e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.

(c) Annual income. See 3.660.

(d) Apportionment (3.450 series; 3.556).

(1) Except as otherwise provided, date of last payment when reason for apportionment no longer exists.

(2) Where pension was apportioned under 3.551(c), day preceding date of veteran's release from hospital, unless overpayment would result; date of last payment if necessary to avoid overpayment.

(e) Federal employees' compensation (3.708). The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective. If children on rolls and surviving spouse has primary title, award to children discontinued same date as surviving spouse's award. (Authority: 5 U.S.C. 8116)

(f) Contested claims (3.402(b) and subpart F of part 20 of this chapter). Date of last payment.

(g) Death (38 U.S.C. 5112(a), (b)):

(1) Payee (includes apportionee). Last day of month before death.

(2) Dependent of payee (includes apportionee):

(i) Death prior to October 1, 1982: last day of the calendar year in which death occurred.

(ii) Death on or after October 1, 1982: last day of the month in which death occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which death occurred.

(3) Veteran receiving retirement pay. Date of death.

(h) Dependency of parent (38 U.S.C 5112; Pub. L. 90-275; 3.4(a), (b)(2), 3.250, 3.551(b) and 3.660). See 3.660.



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(i) Election of Department of Veterans Affairs benefits (3.700 series). Day preceding beginning date of award under other law.

(j) Foreign residence (38 U.S.C. 5308(a)). See 3.653.

(k) Fraud (38 U.S.C. 6103(a), (d); 3.669 and 3.901). Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) Guardian, marriage or divorce of (3.856). Date of last payment (pending receipt of information as to change of name).

(m) Incompetency (3.855). Date of last payment.

(n) Marriage (or remarriage) (38 U.S.C. 101(3), 5112 (b)):

(1) Payee (includes apportionee). Last day of month before marriage.

(2) Dependent of payee (includes apportionee):

(i) Marriage prior to October 1, 1982: last day of the calendar year in which marriage occurred.

(ii) Marriage on or after October 1, 1982: last day of the month in which marriage occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which marriage occurred.

(3) Conduct of surviving spouse. Last day of month before inception of relationship. (38 U.S.C. 101(3), 5112(b))

(o) Penal institutions. See 3.666.

(p) Philippines (38 U.S.C. 107(a)(3); 3.8). Date of last payment when recognition of service withdrawn.

(q) Renouncement (§3.106). Last day of the month in which the renouncement is received.

(r) Service connection (38 U.S.C. 5112(b)(6); §3.105). Last day of month following 60 days after notice to payee. Applies to reduced evaluation, and severance of service connection.



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(s) Treasonable acts or subversive activities (38 U.S.C. 6104 and 6105; §§3.902, 3.903).

(1) Treasonable acts. Date of the forfeiture decision or date of last payment, whichever is earlier.

(2) Subversive activities. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) Whereabouts unknown (§§3.158, 3.656). Date of last payment.

(u) Change in law or Department of Veterans Affairs issue, or interpretation. See §3.114.

(v) Failure to furnish evidence of continued eligibility. See §3.652(a) and (b).

(w) Failure to furnish Social Security number. Last day of the month during which the 60 day period following the date of VA request expires. (Authority: 38 U.S.C. 5101)

(x) Radiation Exposure Compensation Act of 1990 (§3.715). (Compensation or dependency and indemnity compensation only). Last day of the month preceding the month in which payment under the Radiation Exposure Compensation Act of 1990 is issued.

(y) Compensation for certain disabilities due to undiagnosed illnesses (§§ 3.105; 3.317). Last day of the month in which the 60-day period following notice to the payee of the final rating action expires. This applies to both reduced evaluations and severance of service connection. (Authority: Pub. L. 103-446; 38 U.S.C. 501(a))

§4.118 (7800) (effective 10-08) - Schedule of ratings - skin

7800 Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck:

With visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with six or more characteristics of
disfigurement

80

With visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with four or five characteristics of



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disfigurement 50

With visible or palpable tissue loss and either gross distortion or asymmetry of one feature or paired set of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with two or three characteristics of disfigurement 30

With one characteristic of disfigurement 10

Note (1): The 8 characteristics of disfigurement, for purposes of evaluation under 4.118, are:

Scar 5 or more inches (13 or more cm.) in length.
 Scar at least one-quarter inch (0.6 cm.) wide at widest part.
 Surface contour of scar elevated or depressed on palpation.
 Scar adherent to underlying tissue.
 Skin hypo- or hyper-pigmented in an area exceeding six square inches (39 sq. cm.).
 Skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.).
 Underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.).
 Skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.).

Note (2): Rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate.

Note (3): Take into consideration unretouched color photographs when evaluating under these criteria.

Note (4): Separately evaluate disabling effects other than disfigurement that are associated with individual scar(s) of the head, face, or neck, such as pain, instability, and residuals of associated muscle or nerve injury, under the appropriate diagnostic code(s) and apply 4.25 to combine the evaluation(s) with the evaluation assigned under this diagnostic code.

Note (5): The characteristic(s) of disfigurement may be caused by one scar or by multiple scars; the characteristic(s) required to assign a particular evaluation need not be caused by a single scar in order to assign that evaluation.

§4.118 (7801) (effective 10-08) - Schedule of ratings - skin



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7801 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear:

Area or areas of 144 square inches (929 sq. cm.) or greater 40

Area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.) 30

Area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.) 20

Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.) 10

Note (1): A deep scar is one associated with underlying soft tissue damage.

Note (2): If multiple qualifying scars are present, or if a single qualifying scar affects more than one extremity, or a single qualifying scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single qualifying scar affects both the anterior portion and the posterior portion of the trunk, assign a separate evaluation for each affected extremity based on the total area of the qualifying scars that affect that extremity, assign a separate evaluation based on the total area of the qualifying scars that affect the anterior portion of the trunk, and assign a separate evaluation based on the total area of the qualifying scars that affect the posterior portion of the trunk. The midaxillary line on each side separates the anterior and posterior portions of the trunk. Combine the separate evaluations under 4.25. Qualifying scars are scars that are nonlinear, deep, and are not located on the head, face, or neck.

§4.118 (7802) (effective 10-08) - Schedule of ratings - skin

7802 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear:

Area or areas of 144 square inches (929 sq. cm.) or greater 10

Note (1): A superficial scar is one not associated with underlying soft tissue damage.

Note (2): If multiple qualifying scars are present, or if a single qualifying scar affects more than one extremity, or a single qualifying scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single qualifying scar affects both the anterior portion and the posterior portion of the trunk, assign a separate



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evaluation for each affected extremity based on the total area of the qualifying scars that affect that extremity, assign a separate evaluation based on the total area of the qualifying scars that affect the anterior portion of the trunk, and assign a separate evaluation based on the total area of the qualifying scars that affect the posterior portion of the trunk. The midaxillary line on each side separates the anterior and posterior portions of the trunk. Combine the separate evaluations under 4.25. Qualifying scars are scars that are nonlinear, superficial, and are not located on the head, face, or neck.

§4.118 (7804) (effective 10-08) - Schedule of ratings - skin

7804 Scar(s), unstable or painful:

Five or more scars that are unstable or painful 30

Three or four scars that are unstable or painful 20

One or two scars that are unstable or painful 10

Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar.

Note (2): If one or more scars are both unstable and painful, add 10 percent to the evaluation that is based on the total number of unstable or painful scars.

Note (3): Scars evaluated under diagnostic codes 7800, 7801, 7802, or 7805 may also receive an evaluation under this diagnostic code, when applicable.

§4.118 (7805) (effective 10-08) - Schedule of ratings - skin

7805 Scars, other (including linear scars) and other effects of scars evaluated under diagnostic codes 7800, 7801, 7802, and 7804:

Evaluate any disabling effect(s) not considered in a rating provided under diagnostic codes 7800-04 under an appropriate diagnostic code.



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§4.119 (7913) - Schedule of ratings-endocrine system

7913 Diabetes mellitus

Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated 100

Requiring insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated 60

Requiring insulin, restricted diet, and regulation of activities 40

Requiring insulin and restricted diet, or; oral hypoglycemic agent and restricted diet 20

Manageable by restricted diet only 10

Note (1): Evaluate compensable complications of diabetes separately unless they are part of the criteria used to support a 100 percent evaluation. Noncompensable complications are considered part of the diabetic process under diagnostic code 7913.

Note (2): When diabetes mellitus has been conclusively diagnosed, do not request a glucose tolerance test solely for rating purposes.

§4.14 - Avoidance of pyramiding

The evaluation of the same disability under various diagnoses is to be avoided. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent, so that special rules are included in the appropriate bodily system for their evaluation. Dyspnea, tachycardia, nervousness, fatigability, etc., may result from many causes; some may be service connected, others, not. Both the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation and the evaluation of the same manifestation under different diagnoses are to be avoided.



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§4.25 - Combined ratings table

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. The combined value, exactly as found in table I, will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10, adjusting final 5's upward. Thus if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I).

(b) Except as otherwise provided in this schedule, the disabilities arising from a single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are to be rated separately as are all other disabling conditions, if any. All disabilities are then to be combined as described in paragraph (a) of this section. The conversion to the nearest degree divisible by 10 will be done only once per rating decision, will follow the combining of all disabilities, and will be the last procedure in determining the combined degree of disability. (Authority: 38 U.S.C. 1155)

Table I-Combined Ratings Table



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[10 combined with 10 is 19]

	10	20	30	40	50	60	70	80	90
19	27	35	43	51	60	68	76	84	92
20	28	36	44	52	60	68	76	84	92
21	29	37	45	53	61	68	76	84	92
22	30	38	45	53	61	69	77	84	92
23	31	38	46	54	62	69	77	85	92
24	32	39	47	54	62	70	77	85	92
25	33	40	48	55	63	70	78	85	93
26	33	41	48	56	63	70	78	85	93
27	34	42	49	56	64	71	78	85	93
28	35	42	50	57	64	71	78	86	93
29	36	43	50	57	65	72	79	86	93
30	37	44	51	58	65	72	79	86	93
31	38	45	52	59	66	72	79	86	93
32	39	46	52	59	66	73	80	86	93
33	40	46	53	60	67	73	80	87	93
34	41	47	54	60	67	74	80	87	93
35	42	48	55	61	68	74	81	87	94
36	42	49	55	62	68	74	81	87	94
37	43	50	56	62	69	75	81	87	94
38	44	50	57	63	69	75	81	88	94
39	45	51	57	63	70	76	82	88	94
40	46	52	58	64	70	76	82	88	94
41	47	53	59	65	71	76	82	88	94
42	48	54	59	65	71	77	83	88	94
43	49	54	60	66	72	77	83	89	94
44	50	55	61	66	72	78	83	89	94
45	51	56	62	67	73	78	84	89	95
46	51	57	62	68	73	78	84	89	95
47	52	58	63	68	74	79	84	89	95
48	53	58	64	69	74	79	84	90	95
49	54	59	64	69	75	80	85	90	95
50	55	60	65	70	75	80	85	90	95
51	56	61	66	71	76	80	85	90	95
52	57	62	66	71	76	81	86	90	95
53	58	62	67	72	77	81	86	91	95
54	59	63	68	72	77	82	86	91	95
55	60	64	69	73	78	82	87	91	96
56	60	65	69	74	78	82	87	91	96



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57 61 66 70 74 79 83 87 91 96
58 62 66 71 75 79 83 87 92 96
59 63 67 71 75 80 84 88 92 96
60 64 68 72 76 80 84 88 92 96
61 65 69 73 77 81 84 88 92 96
62 66 70 73 77 81 85 89 92 96

Table I-Combined Ratings Table (cont.)

10 20 30 40 50 60 70 80 90

63 67 70 74 78 82 85 89 93 96
64 68 71 75 78 82 86 89 93 96
65 69 72 76 79 83 86 90 93 97
66 69 73 76 80 83 86 90 93 97
67 70 74 77 80 84 87 90 93 97
68 71 74 78 81 84 87 90 94 97
69 72 75 78 81 85 88 91 94 97
70 73 76 79 82 85 88 91 94 97
71 74 77 80 83 86 88 91 94 97
72 75 78 80 83 86 89 92 94 97
73 76 78 81 84 87 89 92 95 97
74 77 79 82 84 87 90 92 95 97
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93 94 94 95 96 97 97 98 99 99



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94 95 95 96 96 97 98 98 99 99

§4.31 - A no-percent rating

In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.

§4.75 (12-08) - General considerations for evaluating visual impairment

(a) Visual impairment. The evaluation of visual impairment is based on impairment of visual acuity (excluding developmental errors of refraction), visual field, and muscle function.

(b) Examination for visual impairment. The examination must be conducted by a licensed optometrist or by a licensed ophthalmologist. The examiner must identify the disease, injury, or other pathologic process responsible for any visual impairment found. Examinations of visual fields or muscle function will be conducted only when there is a medical indication of disease or injury that may be associated with visual field defect or impaired muscle function. Unless medically contraindicated, the fundus must be examined with the claimant's pupils dilated.

(c) Service-connected visual impairment of only one eye. Subject to the provisions of 38 CFR 3.383(a), if visual impairment of only one eye is service-connected, the visual acuity of the other eye will be considered to be 20/40 for purposes of evaluating the service-connected visual impairment.

(d) Maximum evaluation for visual impairment of one eye. The evaluation for visual impairment of one eye must not exceed 30 percent unless there is anatomical loss of the eye. Combine the evaluation for visual impairment of one eye with evaluations for other disabilities of the same eye that are not based on visual impairment (e.g., disfigurement under diagnostic code 7800).

(e) Anatomical loss of one eye with inability to wear a prosthesis. When the claimant has anatomical loss of one eye and is unable to wear a prosthesis, increase the evaluation for visual acuity under diagnostic code 6063 by 10 percent, but the maximum evaluation for visual impairment of both eyes must not exceed 100 percent. A 10-percent increase under this paragraph precludes an evaluation under diagnostic code 7800 based on gross distortion or asymmetry of the eye but not an evaluation under diagnostic code 7800 based on other characteristics of disfigurement.



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(f) Special monthly compensation. When evaluating visual impairment, refer to 38 CFR 3.350 to determine whether the claimant may be entitled to special monthly compensation. Footnotes in the schedule indicate levels of visual impairment that potentially establish entitlement to special monthly compensation; however, other levels of visual impairment combined with disabilities of other body systems may also establish entitlement. (Authority: 38 U.S.C. 1114 and 1155)

§4.76 - Examination of field vision

Measurement of the visual field will be made when there is disease of the optic nerve or when otherwise indicated. The usual perimetric methods will be employed, using a standard perimeter and 3 mm. white test object. At least 16 meridians 22-1/2 degrees apart will be charted for each eye. (See Figure 1. For the 8 principal meridians, see Table III.) The charts will be made a part of the report of examination. Not less than 2 recordings, and when possible, 3 will be made. The minimum limit for this function is established as a concentric central contraction of the visual field to 5_. This type of contraction of the visual field reduces the visual efficiency to zero. Where available the examination for form field should be supplemented, when indicated, by the use of tangent screen or campimeter. This last test is especially valuable in detection of scotoma.

§4.76 (12-08) - Visual acuity

(a) Examination of visual acuity. Examination of visual acuity must include the central uncorrected and corrected visual acuity for distance and near vision using Snellen's test type or its equivalent.

(b) Evaluation of visual acuity.

(1) Evaluate central visual acuity on the basis of corrected distance vision with central fixation, even if a central scotoma is present. However, when the lens required to correct distance vision in the poorer eye differs by more than three diopters from the lens required to correct distance vision in the better eye (and the difference is not due to congenital or developmental refractive error), and either the poorer eye or both eyes are service connected, evaluate the visual acuity of the poorer eye using either its uncorrected or corrected visual acuity, whichever results in better combined visual acuity.

(2) Provided that he or she customarily wears contact lenses, evaluate the visual acuity of any individual affected by a corneal disorder that results in severe irregular astigmatism that can be improved more by contact lenses than by eyeglass lenses, as corrected by contact lenses.



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(3) In any case where the examiner reports that there is a difference equal to two or more scheduled steps between near and distance corrected vision, with the near vision being worse, the examination report must include at least two recordings of near and distance corrected vision and an explanation of the reason for the difference. In these cases, evaluate based on corrected distance vision adjusted to one step poorer than measured.

(4) To evaluate the impairment of visual acuity where a claimant has a reported visual acuity that is between two sequentially listed visual acuities, use the visual acuity which permits the higher evaluation.
(Authority: 38 U.S.C. 1155)

§4.76a - Computation of average concentric contraction of visual fields

The extent of contraction of visual field in each eye is determined by recording the extent of the remaining visual fields in each of the eight 45 degree principal meridians. The number of degrees lost is determined at each meridian by subtracting the remaining degrees from the normal visual fields given in Table III. The degrees lost are then added together to determine total degrees lost. This is subtracted from 500. The difference represents the total remaining degrees of visual field. The difference divided by eight represents the average contraction for rating purposes.

Table III-Normal Visual Field Extent at 8 Principal Meridians

Meridian	Normal Degrees
Temporally	85
Down temporally	85
Down	65
Down nasally	50
Nasally	60
Up nasally	55
Up	45
Up temporally	55
Total	500

Example of computation of concentric contraction under the schedule with abnormal findings taken from Figure 1.

Loss	Degrees
Temporally	55
Down temporally	55
Down	45



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Down nasally 30
 Nasally 40
 Up nasally 35
 Up 25
 Up temporally 35
 Total 320

Remaining field 500 degrees minus 320 degrees = 180 degrees. $180 \text{ degrees} / 8 = 22.5$ degrees average concentric contraction.

§4.76a (12-08) - Computation of average concentric contraction of visual fields

Table III-Normal Visual Field Extent at 8 Principal Meridians

Meridian Normal Degrees

Temporally 85
 Down temporally 85
 Down 65
 Down nasally 50
 Nasally 60
 Up nasally 55
 Up 45
 Up temporally 55

 Total 500

Example of computation of concentric contraction under the schedule with abnormal findings taken from Figure 1.

Loss Degrees

Temporally 55
 Down temporally 55
 Down 45
 Down nasally 30
 Nasally 40
 Up nasally 35
 Up 25



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Up temporally 35
Total 320

Remaining field 500 degrees minus 320 degrees = 180 degrees. 180 degrees/8 = 22.5 degrees average concentric contraction.

§4.77 - Examination of muscle function

The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann Perimeter Chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20 or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does not exist within 40 in the lateral or downward quadrants, or within 30 in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

§4.77 (12-08) - Visual fields

(a) Examination of visual fields. Examiners must use either Goldmann kinetic perimetry or automated perimetry using Humphrey Model 750, Octopus Model 101, or later versions of these perimetric devices with simulated kinetic Goldmann testing capability. For phakic (normal) individuals, as well as for pseudophakic or aphakic individuals who are well adapted to intraocular lens implant or contact lens correction, visual field examinations must be conducted using a standard target size and luminance, which is Goldmann's equivalent III/4e. For aphakic individuals not well adapted to contact lens correction or pseudophakic individuals not well adapted to intraocular lens implant, visual field examinations must be conducted using Goldmann's equivalent IV/ 4e. In all cases, the results must be recorded on a standard Goldmann chart (see Figure 1), and the Goldmann chart must be included with the examination report. The examiner must chart at least 16 meridians 22 degrees apart for each eye and indicate the Goldmann equivalent used. See Table III for the normal extent (in degrees) of the visual fields at the 8 principal meridians (45 degrees apart). When the examiner indicates that additional testing is necessary to evaluate visual fields, the additional testing must be conducted using either a tangent screen or a 30-degree threshold visual field with the Goldmann III stimulus size. The examination report must then include the tracing of either the tangent screen or of the 30-degree threshold visual field with the Goldmann III stimulus size.



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(b) Evaluation of visual fields. Determine the average concentric contraction of the visual field of each eye by measuring the remaining visual field (in degrees) at each of eight principal meridians 45 degrees apart, adding them, and dividing the sum by eight.

(c) Combination of visual field defect and decreased visual acuity. To determine the evaluation for visual impairment when both decreased visual acuity and visual field defect are present in one or both eyes and are service connected, separately evaluate the visual acuity and visual field defect (expressed as a level of visual acuity), and combine them under the provisions of 4.25.

(Authority: 38 U.S.C. 1155)

§4.78 (12-08) - Muscle Function

(a) Examination of muscle function. The examiner must use a Goldmann perimeter chart that identifies the four major quadrants (upward, downward, left and right lateral) and the central field (20 degrees or less) (see Figure 2). The examiner must chart the areas of diplopia and include the plotted chart with the examination report.

(b) Evaluation of muscle function.

(1) An evaluation for diplopia will be assigned to only one eye. When a claimant has both diplopia and decreased visual acuity or visual field defect, assign a level of corrected visual acuity for the poorer eye (or the affected eye, if disability of only one eye is service-connected) that is: one step poorer than it would otherwise warrant if the evaluation for diplopia under diagnostic code 6090 is 20/70 or 20/100; two steps poorer if the evaluation under diagnostic code 6090 is 20/200 or 15/200; or three steps poorer if the evaluation under diagnostic code 6090 is 5/200. This adjusted level of corrected visual acuity, however, must not exceed a level of 5/200. Use the adjusted visual acuity for the poorer eye (or the affected eye, if disability of only one eye is service-connected), and the corrected visual acuity for the better eye (or visual acuity of 20/40 for the other eye, if only one eye is service-connected) to determine the percentage evaluation for visual impairment under diagnostic codes 6065 through 6066.

(2) When diplopia extends beyond more than one quadrant or range of degrees, evaluate diplopia based on the quadrant and degree range that provides the highest evaluation.

(3) When diplopia exists in two separate areas of the same eye, increase the equivalent visual acuity under diagnostic code 6090 to the next poorer level of visual acuity, not to exceed 5/200.



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(Authority: 38 U.S.C. 1155)

§4.79 (6006) (12-08) - Schedule of ratings - eye

6006 Retinopathy or maculopathy

GENERAL RATING FORMULA FOR DIAGNOSTIC CODES 6000 THROUGH 6009:

Evaluate on the basis of either visual impairment due to the particular condition or on incapacitating episodes, whichever results in a higher evaluation.

With incapacitating episodes having a total duration of at least 6 weeks during the past 12 months.....60

With incapacitating episodes having a total duration of at least 4 weeks, but less than 6 weeks, during the past 12 months.....40

With incapacitating episodes having a total duration of at least 2 weeks, but less than 4 weeks, during the past 12 months.....20

With incapacitating episodes having a total duration of at least 1 week, but less than 2 weeks, during the past 12 months.....10

Note: For VA purposes, an incapacitating episode is a period of acute symptoms severe enough to require prescribed bed rest and treatment by a physician or other healthcare provider.

§4.118 (7803) (effective 08-30-02) - Schedule of ratings-skin

7803 Scars, superficial, unstable. 10

Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar.

Note (2): A superficial scar is one not associated with underlying soft tissue damage.

VA, in determining all claims for benefits that have been reasonably raised by the filings and



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evidence, has applied the benefit-of-the-doubt and liberally and sympathetically reviewed all submissions in writing from the Veteran as well as all evidence of record.

DECISION:

1. Two clear and unmistakable errors are found in previous evaluations of diabetic retinopathy, both eyes, status post focal laser both eyes (previously rated under DC 6079), which now includes diabetic maculopathy, and a retroactive increased evaluation to 30 percent disabling is established from August 21, 2014. Also, a retroactive increase to 80 percent disabling is established from July 26, 2018. The evaluation is reduced to 60 percent effective October 1, 2020. Entitlement to an initial disability rating greater than 20 percent is not warranted, and an evaluation greater than 60 percent subsequent to October 1, 2020 is not warranted.

2. Evaluation of tinea pedis and onychomycosis of the feet has now been combined with the evaluation of type II diabetes mellitus (Herbicide) because the evaluation of tinea pedis and onychomycosis of the feet is noncompensable. Entitlement to an initial compensable disability rating for tinea pedis and onychomycosis of both feet remains denied.

REASONS AND BASES:

1. Your appeal regarding this issue was remanded for additional evidence, specifically, additional treatment records and a VA examination. The requested actions have now been completed.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been. In this case, a retroactive increase for diabetic retinopathy, both eyes, status post focal laser both eyes (previously rated under DC 6079) is granted as the previous evaluation decision was a clear and unmistakable error. (38 CFR 3.105)

Your private treatment records also diagnose diabetic maculopathy, and this has been included as part of your eye conditions as secondary to your service connected diabetes mellitus (38 CFR 3.310) It is also noted that you have been diagnosed with cataracts, and your claim for entitlement to service connection for this condition has been decided separately. All symptoms have been attributed to your service connected retinopathy and maculopathy, which are evaluated based on the same criteria, as noted below. Separate evaluations are not warranted for



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retinopathy and maculopathy, since they are evaluated based on the same criteria (38 CFR 4.14, 38 CFR 4.79).

In your case, while your appeal has been pending you attended a VA examination regarding your service connected eye condition on August 21, 2014. The results of this examination show that a 30 percent evaluation is warranted for your condition based on best corrected distance vision. This evidence was part of your record when we issued subsequent decisions regarding the evaluation of your service connected eye condition on August 24, 2018. Therefore we erred by not establishing the 30 percent evaluation for this condition. We have now corrected your record by increasing your evaluation to 30 percent (38 CFR 4.1). A 30 percent evaluation is warranted from August 21, 2014, the date of the VA examination showing a worsening of your condition (38 CFR 3.105, 38 CFR 3.400).

The rating schedule for evaluating eye conditions changed during the time your appeal has been pending. A 30 percent evaluation is warranted from August 21, 2014 until the subsequent increase to 80 percent on July 26, 2018 under both the old and new rating schedules.

We have assigned a 30 percent evaluation for your retinopathy and maculopathy, under the old rating schedule based on:

- Visual impairment as described below

Your visual acuity warrants 30 percent evaluation based on:

Your left eye shows corrected near vision of 20/50 (20/50). Your left eye corrected far vision was shown as 20/50 (20/50).

Your right eye shows corrected near vision of 15/200 (15/200). Your right eye corrected far vision was shown as 20/200 (20/200).

Your eyes show normal visual fields bilaterally.

Higher evaluations are based on more severe levels of visual impairment. (38 CFR 4.75, 38 CFR 4.76, Historical 38 CFR 4.79 effective prior to May 13, 2018)

The rating schedule for evaluating eye conditions changed on May 13, 2018. A 30 percent evaluation is also warranted under the new rating schedule. We have assigned a 30 percent evaluation for your diabetic retinopathy (includes proliferative and non-proliferative types) and maculopathy based on:

- Visual impairment described below



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Your eyes show normal visual fields bilaterally.

Additional symptom(s) include:

- No incapacitating episodes reported.

Your visual acuity warrants a 30 percent evaluation based on:

Your left eye shows corrected near vision of 20/50. Your left eye corrected far vision was shown as 20/50.

Your right eye shows corrected near vision of 15/200. Your right eye corrected far vision was shown as 20/200.

Higher evaluations are based on more severe levels of visual impairment.

A higher evaluation of 40 percent is not warranted under the General Rating Formula for Diseases of the Eye unless there are documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79 effective May 13, 2018)

We also erred in our decision dated August 24, 2018 because the results of your examination conducted on July 26, 2018 show visual impairment with impairment in visual acuity and with visual fields. We established an evaluation based solely on visual acuity findings. Your private treatment records, which were of record at the time of the August 24, 2018 decision, note your diagnoses of diabetic retinopathy and diabetic maculopathy, and also note that you underwent laser treatments to both eyes to treat these conditions. The VA examiner in July 2018 noted that your decrease in visual acuity or other visual impairment is due to your bilateral proliferative diabetic retinopathy and noted abnormal findings of the macula due to laser treatments. We have now established an evaluation based on the visual acuity and visual field findings (38 CFR 3.105).

An increased evaluation of 80 percent is assigned from July 26, 2018, the date of the VA examination showing that the increased evaluation is warranted (38 CFR 4.1, 38 CFR 3.400).

We have assigned an 80 percent evaluation for your retinopathy and maculopathy, based on:

- Visual impairment as described below

Additional symptom(s) include:

- Incapacitating episodes described below

Your visual acuity warrants 60 percent evaluation based on:



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Your left eye shows corrected near vision of 20/100 (20/100). Your left eye corrected far vision was shown as 20/100 (20/100).

Your right eye shows corrected near vision of 10/200 (10/200). Your right eye corrected far vision was shown as 10/200 (10/200).

Your visual fields warrant 60 percent evaluation based on:

The left eye shows an average contraction to 18.125 degrees. This is based on the following examination findings: A normal field of vision temporally is 85 degrees. The examination shows 40 degrees. Normal vision down temporally is 85. Your field is 17 in the left eye. The normal field of vision down is 65. 20 degrees is shown. Down nasally, 50 is normal. You show 13. Normal vision nasally is 60. Examination findings show 10. Up nasally, 55 is considered normal. 14 is demonstrated. The normal field of vision up is 45 degrees. 12 is shown. The final field of vision considered for the left eye is up temporally. 55 is normal with 19 shown on examination. The total remaining visual field for the left eye is 145. When this number is divided by the eight directions, rounded up, the average contraction is obtained. The left eye can be rated on its concentric contraction or based on an equivalent visual acuity of 20/100. (38 CFR 4.77)

Unilateral concentric contraction of the left eye visual field with remaining field of 16 to 30 degrees warrants 10 percent evaluation, and is included in your overall visual fields evaluation. (38 CFR 4.79)

The right eye shows an average contraction to 13.625 degrees. This is based on the following examination findings: A normal field of vision temporally is 85 degrees. The examination shows 20 degrees. Normal vision down temporally is 85. Your field is 12 in the right eye. The normal field of vision down is 65. 10 degrees is shown. Down nasally, 50 is normal. You show 10. Normal vision nasally is 60. Examination findings show 20. Up nasally, 55 is considered normal. 12 is demonstrated. The normal field of vision up is 45 degrees. 10 is shown. The final field of vision considered for the right eye is up temporally. 55 is normal with 15 shown on examination. The total remaining visual field for the right eye is 109. When this number is divided by the eight directions, rounded up, the average contraction is obtained. The right eye can be rated on its concentric contraction or based on an equivalent visual acuity of 20/200. (38 CFR 4.77)

Unilateral concentric contraction of the right eye visual field with remaining field of 6 to 15 degrees warrants 20 percent evaluation, and is included in your overall visual fields evaluation. (38 CFR 4.77)

A noncompensable evaluation is warranted under the General Rating Formula for Diseases of the Eye based on:

- No incapacitating episodes noted



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When both decreased visual acuity and visual field defect are present in one or both eyes and are service connected, the visual acuity and visual field defect (expressed as a level of visual acuity), are separately evaluated and combined under the provisions of 38 CFR §4.25 {38 CFR §4.77(c)}. Your visual acuity warrants 60 percent evaluation. Your visual field defect warrants 60 percent evaluation. These evaluations combine under 38 CFR §4.25 for 80 percent evaluation. (38 CFR §4.25 {38 CFR §4.77(c)})

Higher evaluations are based on more severe levels of visual impairment. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79)

The evaluation for impairment of central visual acuity is based on objective testing. Higher evaluations are assigned for more severe levels of visual impairment. (38 CFR 4.76)

An evaluation of 60 percent is assigned from October 1, 2020, the date of the VA contract examination showing improvement in your condition and that an 80 percent evaluation is no longer warranted. No due process is needed for this reduction since there will be no reduction in payment based on this reduced evaluation. (38 CFR 4.1, 38 CFR 3.400, 38 CFR 3.105, 38 CFR 3.500)

We have assigned a 60 percent evaluation for your diabetic retinopathy (includes proliferative and non-proliferative types) and maculopathy based on:

- Visual impairment described below

Your eyes show normal visual fields bilaterally.

Additional symptom(s) include:

- Documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months.

Your visual acuity warrants a 60 percent evaluation based on:

Your left eye shows corrected near vision of 20/200. Your left eye corrected far vision was shown as 20/100.

Your right eye shows corrected near vision of 15/200. Your right eye corrected far vision was shown as 20/200.

Higher evaluations are based on more severe levels of visual impairment. It is noted that your most recent examination also noted the presence of a central scotoma. Please be advised that a separate evaluation is not warranted for a central scotoma in your case. A central scotoma is rated as 10 percent unilaterally, or is rated based on visual acuity, whichever will result in a higher evaluation. In your case, visual acuity findings result in a higher evaluation. (38 CFR



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4.79)

This is the highest schedular evaluation allowed by law for diabetic retinopathy (includes proliferative and non-proliferative types) and maculopathy. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79)

This is the highest evaluation allowed by law under the General Rating Formula for Diseases of the Eye. (38 CFR 4.75, 38 CFR 4.76, 38 CFR 4.79)

Please be advised that separate correspondence also discusses this issue.

Prior to August 21, 2014, an initial evaluation of 20 percent remains appropriate, because the evidence of record, including your treatment records and examination results, do not show symptoms or manifestations associated with an evaluation higher than 20 percent prior to the examination dated August 21, 2014. Also, although an 80 percent evaluation was warranted effective July 26, 2018, your subsequent examination on October 1, 2020 shows symptoms and manifestations associated with a 60 percent evaluation, and we have not received evidence showing that a higher evaluation than 60 percent is warranted from October 1, 2020 or later.

Please see below regarding the current rating schedule for your service connected eye condition:

From 38 CFR 4.79: General Rating Formula for Diseases of the Eye:

Evaluate on the basis of either visual impairment due to the particular condition or on incapacitating episodes, whichever results in a higher evaluation

With documented incapacitating episodes requiring 7 or more treatment visits for an eye condition during the past 12 months 60

With documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months 40

With documented incapacitating episodes requiring at least 3 but less than 5 treatment visits for an eye condition during the past 12 months 20

With documented incapacitating episodes requiring at least 1 but less than 3 treatment visits for an eye condition during the past 12 months 10

Note (1): For the purposes of evaluation under 38 CFR 4.79, an incapacitating episode is an eye condition severe enough to require a clinic visit to a provider specifically for treatment purposes

Note (2): Examples of treatment may include but are not limited to: Systemic immunosuppressants or biologic agents; intravitreal or periocular injections; laser treatments; or other surgical interventions

Note (3): For the purposes of evaluating visual impairment due to the particular condition, refer to 38 CFR 4.75-4.78 and to §4.79, diagnostic codes 6061-6091

2. The Board of Veterans' Appeals remanded this issue for additional development. The



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requested actions have now been completed.

Please be advised that, since your skin condition is secondary to your service connected diabetes mellitus and your skin condition is noncompensable, VA guidelines mandate that noncompensable complications are considered part of the diabetic process. We have now corrected your record to show the service connected condition as diabetes mellitus type II with tinea pedis and onychomycosis of the feet. (38 CFR 4.119) Because tinea pedis and onychomycosis of the feet would be rated as a non-compensable disability by itself, it has now been included in combination with your service-connected diabetes mellitus type II. A higher and separate evaluation for tinea pedis and onychomycosis of the feet is not warranted unless there is At least 5 percent, but less than 20 percent, of the entire body affected; or, at least 5 percent, but less than 20 percent, of the exposed areas of the body affected; or, intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period. (Historical 38 CFR 4.118 effective prior to August 13, 2018). Under the new rating schedule, a higher and separate evaluation for tinea pedis and onychomycosis of the feet is not warranted unless there is characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas; or, characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body; or, intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA or other immunosuppressive drugs required for a total duration of less than six weeks over the past 12-month period. (38 CFR 4.118)

The evidence of record, including your treatment records, and examination results with addendum noting review of your private records, shows that a non-compensable evaluation remains appropriate for your condition.

The way in which skin conditions are evaluated changed while your appeal has been pending. A noncompensable evaluation is warranted under both the old and new rating schedules.

We have continued a 0 percent evaluation for your tinea pedis and onychomycosis of the feet under the old rating schedule based on:

- Less than 5 percent of the entire body affected
- No more than topical therapy required during the past 12-month period

Higher evaluations may also be warranted based on:

- Disfigurement of the head, face, or neck
- Scars considered disabling due to limitation of function of the affected part; or,
- Painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for dermatophytosis unless the evidence shows:



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- At least 5 percent, but less than 20 percent, of the entire body affected; or,
- At least 5 percent, but less than 20 percent, of the exposed areas of the body affected; or,
- Intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period. (Historical 38 CFR 4.118 effective prior to August 13, 2018)

We have continued a 0 percent evaluation for your tinea pedis and onychomycosis of the feet under the new rating schedule based on:

- Characteristic lesions involving less than 5 percent of the entire body
- No more than topical therapy required over the past 12-month period

Higher evaluations may also be warranted based on:

- Disfigurement of the head, face, or neck
- Scars considered disabling due to limitation of function of the affected part; or,
- Painful or unstable scar(s) (38 CFR 4.118)

A higher evaluation of 10 percent is not warranted for general rating formula for the skin unless the evidence shows:

- Characteristic lesions affecting at least 5 percent, but less than 20 percent, of the exposed areas; or,
- Characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body; or,
- Intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA or other immunosuppressive drugs required for a total duration of less than six weeks over the past 12-month period. (38 CFR 4.118)

Please be advised that separate correspondence also discusses this issue.

Please see below regarding the current rating schedule regarding this condition:

38 CFR 4.118: General Rating Formula For The Skin For DCs 7806, 7809, 7813-7816, 7820-7822, and 7824:

At least one of the following 60

Characteristic lesions involving more than 40 percent of the entire body or more than 40 percent of exposed areas affected; or

Constant or near-constant systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, psoralen with long-wave ultraviolet-A light (PUVA), or other immunosuppressive drugs required over the past 12-month period 60

At least one of the following 30



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Characteristic lesions involving 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected; or Systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA, or other immunosuppressive drugs required for a total duration of 6 weeks or more, but not constantly, over the past 12-month period

At least one of the following 10

Characteristic lesions involving at least 5 percent, but less than 20 percent, of the entire body affected; or

At least 5 percent, but less than 20 percent, of exposed areas affected; or

Intermittent systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA, or other immunosuppressive drugs required for a total duration of less than 6 weeks over the past 12-month period

No more than topical therapy required over the past 12-month period and at least one of the following 0

Characteristic lesions involving less than 5 percent of the entire body affected; or

Characteristic lesions involving less than 5 percent of exposed areas affected

Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DCs 7801, 7802, 7804, or 7805), depending upon the predominant disability. This rating instruction does not apply to DC 7824

PREPARED BY eSign: certified by ADJSDOLA, DRO.

APPROVED BY null



APPEALS SATISFACTION NOTICE

I have received the recent correspondence regarding the decision to grant one or more of my issues on appeal. Based on the decision rendered, I am satisfied and wish to withdraw all remaining issues associated with this appeal. By signing and submitting this form, I am asking to withdraw all remaining issue(s) contained in my recent Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC) and ask the regional office of jurisdiction to discontinue further development actions associated with this appeal.

Please only return this document if you no longer want to pursue the remaining items contained in your Statement of the Case (SOC)/Supplemental Statement of the Case (SSOC).

Appellant Name or
Accredited Representative

VA Claim number or SSN

Signature

Date

When completed, please mail to the address provided in the attached decision letter.

YOUR RIGHTS TO SEEK FURTHER REVIEW OF OUR DECISION

After careful and compassionate consideration of the matter(s) before VA, we have reached a decision. This document outlines your rights to seek further review of our decision on any issue with which you are dissatisfied or disagree. This document does not apply to decisions issued by the Board of Veterans' Appeals (Board), which have a separate rights notice. For **most VA benefits**, you must elect one of the review options discussed below within **one year** of the date on your decision notice letter to preserve your right to receive the maximum possible benefit. **Consult your decision notice letter for specific filing time limits.** If you are a party to a **contested claim**, you must file an appeal to the Board within **60 days** of the date on your decision notice letter in order to seek review. All parties to a contested claim will have received notice of the decision. See the section below regarding filing an appeal to the Board. You may select different review options for each issue decided by VA. The options are as follows:

Review Options	VA Benefit Claim	Parties to a Contested Claim	Insurance Claim	Fiduciary Decision
Supplemental Claim		Not Available		Not Available
Higher-Level Review		Not Available		
Appeal to the Board				
U.S. District Court Complaint	Not Available	Not Available		Not Available

VA benefits include Compensation, Pension/Survivors Benefits, Education, Loan Guaranty, Vocational Rehabilitation & Employment, Veterans Health Administration, or National Cemetery Administration.

You **MAY NOT** concurrently file for review of any single issue using more than one option at a time. The following is an overview of each option to help you select the most appropriate course of action. You can also find detailed information on all of the available review options and apply at www.vets.gov.

Descriptions of Review Options

Supplemental Claim	Higher-Level Review	Appeal to the Board	U. S. District Court
<p>Use this option when you have additional evidence that is NEW AND RELEVANT to support granting the benefit(s) sought or you can identify existing relevant records that you would like VA to obtain. (NEW evidence means information not previously submitted to VA, and RELEVANT evidence means information that tends to prove or disprove a matter at issue.)</p> <p>VA will assist you in gathering new and relevant evidence to support a Supplemental Claim.</p>	<p>Use this option when you have NO additional evidence to submit, or that you would like VA to obtain, in support of a previously decided issue.</p> <p>You <i>may not</i> request a Higher-Level Review of a Higher-Level Review decision or a Board decision.</p> <p>The designated reviewer will conduct a brand new review of the issue(s) based on the evidence that was before VA at the time of the prior decision(s). An informal conference is available to you and/or your representative, if you choose to exercise this option. The purpose of this telephonic contact is to point out specific errors in the case. VA will not consider any new evidence.</p>	<p>Use this option to appeal to the Board for consideration by a Veterans Law Judge. You may appeal to the Board from a Supplemental Claim decision or a Higher-Level Review decision.</p> <p>When appealing to the Board, you may request a hearing with a Veterans Law Judge and/or the opportunity to submit additional evidence. You may also choose for the Board to review your claim without any additional evidence or a hearing, which may result in a faster decision. By selecting one of these options, the Board will place your appeal onto a list for consideration in the order it was received.</p> <p>The Board does not have a duty to assist you in obtaining additional evidence, but may review whether VA properly fulfilled its duty to assist you in the original claim process and may remand your claim on that basis.</p>	<p>(INSURANCE CLAIMS ONLY)</p> <p>You may challenge VA's decision on your insurance application or claim by filing a complaint with a United States district court in the jurisdiction in which you reside within six years from when the right of action first accrues.</p> <p>To find a district court, use the map at: www.uscourts.gov/court_locator.aspx.</p>

How do I request review by VA of my decision?

To select a review option, you must submit the appropriate form to the appropriate office for review.

For a **Supplemental Claim**, consult your decision notice letter for the required forms and ways to submit the request.

For a **Higher-Level Review**, complete **VA Form 20-0996, Decision Review Request: Higher-Level Review** (available at www.va.gov/vaforms/), and consult your decision notice letter for the required ways to submit the request.

To **Appeal to the Board**, complete **VA Form 10182 - Decision Review Request: Board Appeal (Notice of Disagreement)** (available at www.va.gov/vaforms/), and send the form to:

Board of Veterans' Appeals
P.O. Box 27063
Washington, DC 20038
Fax: 844-678-8979

Can someone help me with my request for review?

Yes, VA recognizes and accredits attorneys, claims agents, and Veterans Service Organizations (VSOs) representatives to assist VA claimants with their benefits claims. VSOs and their representatives are not permitted to charge fees or accept gifts for their services. Only VA-accredited attorneys and claims agents may charge you fees for assisting in a claim for VA benefits, and only after VA has issued an initial decision on the claim and the attorney or claims agent has complied with the power-of-attorney and the fee agreement requirements. For more information on the types of representatives available, see www.va.gov/ogc/accreditation.asp.

If you have not already selected a representative, or if you want to change your representative, a searchable database of VA-recognized VSOs and VA-accredited attorneys, claims agents, and VSO representatives is available at www.va.gov/ogc/apps/accreditation/index.asp. Contact your local VA office for assistance with appointing a representative or visit www.ebenefits.va.gov.

What happens if I do not submit my request for review on time?

If you do not request a review option within the required time limit, you may only seek review through the following options:

- File a request for revision of the decision based on a clear and unmistakable error in the decision;
- File a Supplemental Claim along with new and relevant evidence to support your issue(s). Where a Supplemental Claim is filed after the time limit to seek review of a decision, the effective date for any resulting award of benefits generally will be tied to the date that VA receives the Supplemental Claim.

For more information on all the available review options visit: www.va.gov, or www.vets.gov or contact us at 1-800-827-1000.

NOTE: This form supersedes VA Forms 4107, 4107C, 4107VHA, 4107VRE, 4107INS for VA decisions after the publication in the Federal Register of the applicability date on which the *Veterans Appeals Improvement and Modernization Act of 2017* goes into effect.

Where to Send Your Written Correspondence

The time it takes your response to reach VA affects how long it takes us to process your claim. We recommend responding electronically whenever possible. Only claimants or representatives can upload responses electronically currently. If you are not a claimant or representative, we recommend faxing so VA can receive your responses without wasting the time and money required to mail your documents.

The **fastest** way to respond to VA is to upload your response electronically through VA.gov.

Visit <https://www.va.gov> and under **Disability** click “Upload evidence to support your claim”

VA.gov provides one easy location to upload correspondence as well as learn about filing claims, check claim status, find out how much money you have left to pay for school or training, or refill prescriptions and communicate with your health care team among many items.

If you need to fax or mail your correspondence, identify the benefit type; then, use the corresponding fax number or mailing address below:

Faxing:

<u>Compensation Claims</u> Toll Free: 1-844-531-7818	<u>Pension & Survivors Benefit Claims</u> Toll Free: 1-844-655-1604
<u>Board of Veterans’ Appeals</u> Toll Free: 1-844-678-8979	<u>Fiduciary</u> Toll Free: 1-888-581-6826

Mailing Addresses:

<u>Compensation Claims</u> Department of Veterans Affairs Compensation Intake Center P.O. Box 4444 Janesville, WI 53547-4444	<u>Pension & Survivors Benefit Claims</u> Department of Veterans Affairs Pension Intake Center P.O. Box 5365 Janesville, WI 53547-5365
<u>Board of Veterans’ Appeals</u> Department of Veterans Affairs Board of Veterans’ Appeals P.O. Box 27063 Washington, DC 20038	<u>Fiduciary</u> Department of Veterans Affairs Fiduciary Intake Center P.O. Box 5211 Janesville, WI 53547-5211

These addresses serve **all United States and foreign locations.**



You can also send a text message to 838255 to receive confidential support 24 hours a day, 7 days a week, 365 days a year. For more information, visit www.veteranscrisisline.net